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ARTICLE

When the Executive Accidentally Supported the Movement: Participatory Democracy and the Rise of the Non-Profit Industrial Complex

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ABSTRACT

The critique of the non-profit industrial complex has spread from movement groups and movement-aligned scholars in fields like race, gender, and ethnic studies to influence scholars in other fields, including legal scholars. Despite this growing influence, studies of the non-profit industrial complex devote almost no attention to the importance of the Community Action Program ("CAP"), part of the Economic Opportunity Act of 1964, to its development. When CAP was created, the Johnson Administration sought to capitalize on the rhetoric of "participatory democracy" at a moment when that phrase had great cultural cachet but a deeply ambiguous meaning. The implementation of CAP exposed a rift between the Administration's expectations of limited participation and the hopes of activists in many low-income communities of color, who had been inspired by a collectivist approach to participatory democracy, one that had grown out of John Dewey, the Christian pacifist movement, and the Highlander Folk School to be embraced by the civil rights movement of the early 1960s. As low-income communities of color began to utilize CAP as a tool to support grassroots efforts for social change, the Johnson Administration and Congress developed new restrictions on CAP to rein in what it accidentally unleashed without suffering the political costs of repealing one of the central components of the War on Poverty just months after it had launched. The tactics it developed—stripping funding, influencing board selection, new emphases on quantitative outcomes, reporting, and eligibility for services, and splitting funding for community organizing from funding for service provision—would become core tactics of the non-profit industrial complex.

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Introduction

Arguments that philanthropy can work against social change are not new.[2] But when social movement groups, community organizations, and race, gender, and ethnic studies scholars began to criticize what they named the "non-profit industrial complex" in the late 1990s and early 2000s, they made a more specific claim.[3] They argued that in recent decades, government and private funders developed a set of techniques to manage dissent, focusing movement energy on service provision and opportunities for professional non-profit sector careers, pushing groups toward more modest or mainstream social or political goals, and encouraging movement groups to conduct their work through well-defined non-profit business entities, rather than as messy, decentralized movements.[4] This critique largely grew out of social movements, but has been analyzed and further developed by movement-aligned scholars in varied fields, including in legal scholarship.[5]

This intervention has influenced social movement scholars, movement groups, and some non-profit leaders,[6] but studies of the non-profit industrial complex have been quite vague about how

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[2] *See, e.g.,* KARL MARX & FRIEDRICH ENGELS, MANIFESTO OF THE COMMUNIST PARTY 76 (S. Moore, trans., 2008) (1848) (criticizing "philanthropists, humanitarians… [and] organisers of charity" who take small steps to help the poor, but only "in order to secure the continued existence of bourgeois society").

[3] *See* Soniya Munshi & Craig Willse, *Foreword* to THE REVOLUTION WILL NOT BE FUNDED: BEYOND THE NON-PROFIT INDUSTRIAL COMPLEX xiii, xiii (INCITE! Women of Color Against Violence ed., 2d ed. 2017) (describing the coalition of activists, organizers, service providers, scholars, and others involved developing and spreading the critique to increasingly academic audiences following the 2000 Color of Violence conference); Andrea Smith, *Preface* to THE REVOLUTION WILL NOT BE FUNDED: BEYOND THE NON-PROFIT INDUSTRIAL COMPLEX ix, ix (INCITE! Women of Color Against Violence ed., 2d ed. 2017) (noting that the critique had been around "for years" before the publication of the first publication of this anthology in 2007). Many of these scholars and activists acknowledge that some came to similar conclusions much earlier, and the work of Robert Allen is often cited as a significant early theorist of parts of their critique. *See generally* ROBERT L. ALLEN, BLACK AWAKENING IN CAPITALIST AMERICA (Africa World Press ed. 1990).

[4] INCITE!, BEYOND THE NON-PROFIT INDUSTRIAL COMPLEX, https://incite-national.org/beyond-the-non-profit-industrial-complex/.

[5] Munshi & Willse, *supra* note 3, at xiii. For leading studies on the non-profit industrial complex from scholars of race, gender, and ethnic studies, *see, e.g.,* ALLEN, *supra* note 3; Dylan Rodríguez, *The Political Logic of the Non-Profit Industrial Complex, in* THE REVOLUTION WILL NOT BE FUNDED: BEYOND THE NON-PROFIT INDUSTRIAL COMPLEX 21, 37 (INCITE! Women of Color Against Violence ed., 2007); Ruth Wilson Gilmore, *In the Shadow of the Shadow State*, *in* THE REVOLUTION WILL NOT BE FUNDED: BEYOND THE NON-PROFIT INDUSTRIAL COMPLEX 41, 47 (INCITE! Women of Color Against Violence ed., 2d ed. 2017). For examples of the growing influence of these arguments within legal scholarship, *see, e.g.*, Sameer Ashar & Catherine L. Fisk, *Democratic Norms and Governance Experimentalism in Worker Centers*, 82 LAW & CONTEMP. PROBS. 141, 145-48 (2019); Megan Ming Francis, *The Price of Civil Rights: Black Lives, White Funding, and Movement Capture*, 53 LAW & SOC'Y REV. 275, 298 (2019); Leah Goodridge, *Professionalism as a Racial Construct*, 69 UCLA L. REV. DISCOURSE 38, 44 (2022); Michael Haber, *The New Activist Non-Profits: Four Models Breaking from the Non-Profit Industrial Complex*, 73 U. MIAMI L. REV. 863, 871-73 (2019); Veryl Pow, *Grassroots Movement Lawyering: Insights from the George Floyd Rebellion*, 69 UCLA L. REV. 80, 91-92 (2022); Dean Spade, *Keynote Address*, 19 COLUM. J. GEND. & L. 1086, 1097-1107 (2010).

[6] *See, e.g.,* Nicole Wires, *Making Economic Democracy Work: How to Practice Shared Leadership*, NONPROFIT QUARTERLY (Nov. 28, 2023), https://nonprofitquarterly.org/making-economic-democracy-work-how-to-practice-shared-leadership/ (describing the Nonprofit Democracy Network, a community of practice made of people from 90 nonprofit groups working to create "participatory self-governance" and work outside of the non-profit industrial complex). For a revealing personal narrative from the perspective of a leader of a large legal non-profit on this topic, *see* Justine Olderman, *In Defense of Social Justice Upheaval*, VITAL CITY (Mar. 5, 2025), https://www.vitalcitynyc.org/articles/in-defense-of-social-justice-upheaval-at-nonprofits. Olderman describes how she and other executive directors complained about the "new generation of racial and social justice advocates" joining their staffs "so often that [their complaints] became almost cliché – the absence of nuance, the rejection of incrementalism, the denial of progress, the prioritization of self-care, the refusal to grant grace, the unrealistic

and when this system developed. Perhaps because the non-profit industrial complex has long been associated with—and in many ways enforced by—funding from private foundations, scholars have tended to point generally to major foundations, especially the Ford Foundation, as the force behind the non-profit industrial complex, but their analyses tend to offer little historical detail.[7]

This article argues that the non-profit industrial complex was substantially advanced by the Johnson Administration and its Office of Economic Opportunity through the War on Poverty's Community Action Program ("CAP"), part of the Economic Opportunity Act of 1964. CAP was a short-lived program that included a significant element of community-based participatory democracy as a central feature of how certain anti-poverty programs would be developed. Upon its creation, the program exposed a huge rift between the urban policy "experts" advising the Administration and the demands and priorities of low-income communities of color, especially those politicized during the early 1960s civil rights movement. The Johnson Administration, seeking to minimize the controversy without seeming to abandon one of its signature initiatives,

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expectations, the demand for decision-making power and so on." *Id.* But after a long time not taking their concerns seriously, she was convinced to take a new approach:

> I tried to listen, understand and learn from them…And while it didn't happen overnight, somewhere along the way, what I heard radicalized me. Today, I find myself in agreement with our rebellious staff about a lot of things. I agree that a nuanced and incrementalist approach has not achieved the kind of transformation that the people we serve need and deserve. I agree that our progress has often been co-opted by systems of oppression…I agree that we must grapple with systemic racism within our own organizations…I agree that the work is brutally hard and that we should make it as easy as possible for people to take care of themselves while doing it…And I agree that our staff members are the ones who are doing the work. They *are* our organizations. And they should have more of a voice in what we do and how we do it. *Id.*

[7] For instance, in Andrea Smith's discussion of the "history of the non-profit system," she notes that the Ford Foundation was founded in 1936, that it developed an "active involvement in trying to engineer social change," and "became involved in the civil rights movement, often steering it into more conservative directions," but she covers thirty years of history in just a few sentences, not specifying that Ford, according to Robert Allen's more detailed narrative, did not even consider becoming involved with the civil rights movement until the summer of 1966, largely after the events described in Part III of this article. *Compare* Andrea Smith, *Introduction: The Revolution Will Not Be Funded*, *in* THE REVOLUTION WILL NOT BE FUNDED: BEYOND THE NON-PROFIT INDUSTRIAL COMPLEX 1, 5 (INCITE! Women of Color Against Violence ed., 2007) *with* ALLEN, *supra* note 3, at 70. Allen unfortunately does not address the origins of the non-profit industrial complex nor does he discuss the role of the Johnson Administration, as his focus is on the role of the Ford Foundation in the Black Power movement later in the 1960s. *Id.* Dylan Rodríguez presents a more detailed theoretical framework, but gives few historical specifics for his argument that the non-profit industrial complex was not just developed by foundations, but was "an authentic conspiracy of collaboration among philanthropists and state officials, including local police and federal administrators." Rodríguez, *supra* note 5, at 34-35.

One important exception is the work of Megan Ming Francis to excavate the relationship between the NAACP and the Garland Fund prior to *Brown v. Board of Education*. *See generally* Francis, *supra* note 5. Her analysis is revelatory, but chiefly addresses just one tactic associated with the non-profit industrial complex: the use of funding to influence the priorities of a leading movement organization. The high profile and complexity of the case of the NAACP—because the NAACP was already the most prominent national civil rights group during the time period she analyzes and because of the brilliance of NAACP leaders of that era like W.E.B. Du Bois and James Weldon Johnson—makes it something of an outlier to the critical intervention around the non-profit industrial complex, which largely is focused on small, grassroots movement efforts. John Witt argues that the relationship between the NAACP and the Garland Fund was not a one-way relationship, but a case of Garland "subtly redirect[ing] the NAACP" while the NAACP was simultaneously "coopting the Garland Fund…slyly chang[ing] the Garland Fund's program." Megan Ming Francis & John Fabian Witt, *Movement Capture or Movement Strategy? A Critical Race Exchange on the Beginnings of* Brown v. Board, 31 YALE J. L. & HUMAN. 520, 529 (2021). Most grassroots movement groups lack the resources and sophistication of the NAACP of that era and may be unable to effectively push back against these tactics in the kinds of ways Witt describes.

developed a set of tools to tightly control the grassroots groups that were awarded funding under the Economic Opportunity Act without unwinding CAP entirely.

This is not simply the story of one briefly important government program that featured interesting opportunities for public participation. It is a story of how two ideas about democracy collided, and how that collision helped develop the non-profit industrial complex, which continues to exert significant pressure on both social movements and the non-profit sector today. Ultimately, this article is about the tremendous power of the executive branch, the power of grassroots movements to stand up to it, and the importance of grassroots participatory democracy both to those movements and, in the final analysis, to the entire project of liberal democracy.

Part I presents a history of participatory democracy and how it became so closely interconnected with social movements in the twentieth century. Part II describes how the Johnson Administration created CAP, believing that if it offered opportunities for participation and funding within largely expert-led programs, it could make electoral advances in low-income urban communities of color. Part III describes how those two approaches to participatory democracy collided in CAP, and Part IV argues that the Johnson Administration developed tools to quickly recapture control of the opportunities for participation as soon as they started to be used, and that through the Johnson Administration's efforts to quickly control CAP without admitting defeat, they developed a significant part of the blueprint for the non-profit industrial complex. The conclusion returns to the present, arguing that small-group democracy gives the public a better understanding of, and a deeper commitment to, democratic processes. It further argues that one impact of the development of the non-profit industrial complex is that people in the U.S. have less of a meaningful connection to democracy than prior generations had. This has had a negative impact on both local organizations and the national commitment to democratic principles. It argues that to create a bulwark against oligarchy and corruption and rebuild a national commitment to equity, institutions that purport to be defenders of democracy need to rethink their tendency to rely on expertise at the expense of participatory democracy.

I. Participatory Democracy and Its Importance to 1960s Social Movements

Participatory democracy, a form of governance in which a group of people directly deliberate and make decisions about the policies that affect their lives, first developed in the ancient decision-making practices of bands of hunter-gatherers, hundreds of thousands of years before written records.[8] Those ancient practices evolved in various ways with the rise of larger civilizations, and forms of participatory democracy were used in Athens and other ancient Greek city-states, in the broader Mediterranean and North Africa, including Kongo, Kush, Mali, Mossi, and Phoenicia, in traditional Māori practices, in Balanese *seka*, Bolivian *ayllu,* Indian *panchayats*, and in the Haudenosaunee Confederacy in North America—different groups with their own ideas of self-governance formed in different times and places by people that often had no knowledge of one another.[9]

In Europe, democracy was widely understood to mean direct deliberation in participatory self-

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[8] ELEANOR LEACOCK & RICHARD LEE, *Introduction* to POLITICS AND HISTORY IN BAND SOCIETIES 1, 1-2 (Eleanor Leacock & Richard Lee eds., 1982); Mancur Olson, *Dictatorship, Democracy, and Development*, 87 AM. POL. SCI. REV. 567, 567-68 (1993).

[9] DAVID GRAEBER, THE DEMOCRACY PROJECT 163 (2013); FRANK HENDRIKS, VITAL DEMOCRACY: A THEORY OF DEMOCRACY IN ACTION 112-14 (2010); MICHAEL MENSER, WE DECIDE!: THEORIES AND CASES IN PARTICIPATORY DEMOCRACY 15-17 (2018). Jean-Paul Gagnon, et al., *The Marginalized Democracies of the World*, 8 DEM. THEORY 1, 1-2 (2021).

governance for centuries following the mass participatory democracy that lasted in ancient Athens from 506-338 B.C.E.[10] Two thousand years after the height of Athenian democracy, most of the Founders still understood democracy to mean some kind of participatory democracy and they rejected it as a form of government for the new nation. Instead, they sought to create a liberal "mixed" government that would allow for some input from a section of the public—initially, white male property owners—but limit popular power, using checks and balances to control the "mob" by giving additional weight to the interests of the wealthiest, most prominent, and best-educated men, like themselves.[11] But over the centuries since the founding, the term "democracy" was appropriated by supporters of the "mixed" U.S. republic and similar governments, redefining the term from meaning participatory self-governance. By the twentieth century, leading political scientists argued that the primary function of elections in a democracy is to legitimize the executive's power over the citizenry.[12] That idea of democracy has largely taken over as the

[10] Following reforms brought by the Athenian magistrate Cleisthenes, Athens developed four tools for the *demos* to express itself: in the *ekklesia* (the People's Assembly, in which around 30,000 citizens were eligible to deliberate and directly administer the government), in the *Boulé* (regional councils of 500 people who made decisions by consensus), through the *dikasteria* (courts), and through the *archai* (magistrates). HENDRIKS, *supra* note 9, at 113. Athenian democracy had a robust culture of debate and lawmaking, with thousands of men eligible to vote having the right to speak, propose a new law or new tax, or bring a legal case against another member. MENSER, *supra* note 9, at 12-17. Athens also democratized governmental administration and had a society-building agenda: government roles were elected or appointed through sortition, everyone was called on for brief periods of service, and the entire project emphasized *philia*, community and friendship. *Id.* But Athenian democracy was only able to thrive because of a deeply exploitative economy that relied on domestic labor by women and on the manual labor of enslaved people, whose work "permitted the sudden florescence of Greek urban civilization." PERRY ANDERSON, PASSAGES FROM ANTIQUITY TO FEUDALISM 36-37 (1974). The U.S. Founders learned about the Athenian *ekklesia* through the works of Aristotle, Plato, Thucydides, and other classical writers. CARL J. RICHARD, THE FOUNDERS AND THE CLASSICS: GREECE, ROME, AND THE AMERICAN ENLIGHTENMENT 124 (1994).

[11] ROBERT A. DAHL, HOW DEMOCRATIC IS THE AMERICAN CONSTITUTION? 24-25 (2d ed. 2003); RUSSELL L. HANSON, THE DEMOCRATIC IMAGINATION IN AMERICA: CONVERSATIONS WITH OUR PAST 60-68 (1985); ALEXANDER KEYSSAR, THE RIGHT TO VOTE: THE CONTESTED HISTORY OF DEMOCRACY IN THE UNITED STATES 2 (2000); JACQUES RANCIÈRE, HATRED OF DEMOCRACY 53 (2d ed., 2009); M.J.C. VILE, CONSTITUTIONALISM AND THE SEPARATION OF POWERS 83-87 (2d ed. 1998); Roy N. Lokken, *The Concept of Democracy in Colonial Political Thought*, 16 WILLIAM & MARY QUARTERLY 568, 570-74 (1959).

Even accepting a minimal concept of representative democracy that requires only that subjects get to vote for the representatives who govern them, what the Founders created was a very limited democracy. There is no mention of the public voting in the Constitution. *See* U.S. Const. Art. II, § 1 (describing the requirements related to how each state legislature may appoint electors, a small group that elects the President). Women could not vote until the ratification of the Nineteenth Amendment in 1920. U.S. Const. amend. XIX (ratified 1920). Most Black Americans could not vote until the Voting Rights Act of 1965. Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (codified as amended in sections of 42 and 52 U.S.C.). Non-citizens, including lawful residents, may not vote in federal elections. 18 U.S.C. § 611 (2000). Since the World War I era, states have not allowed non-citizens to vote in state elections either. Jamin B. Raskin, *Legal Aliens, Local Citizens: The Historical, Constitutional, and Theoretical Meanings of Alien Suffrage*, 141 U. PENN. L. REV. 1391, 1397-1417 (1993). U.S. citizens in Washington, D.C. do not have Congressional representation and have only had the right to vote in presidential elections since 1961. U.S. Const. amend. XXIII (ratified 1961). Puerto Rico, Guam, the Northern Mariana Islands, the U.S. Virgin Islands, and American Samoa have limited representation based on the *Insular Cases. See generally De Lima v. Bidwell*, 182 U.S. 1 (1901); *Downes v. Bidwell*, 182 U.S. 244 (1901); *Goetze v. U.S.*, 182 U.S. 221 (1901). These cases "have no foundation in the Constitution and rest instead on racial stereotypes. They deserve no place in our law." *U.S. v. Vaello Madero*, 596 U.S. 159, 180 (2022) (Gorsuch, J., concurring).

[12] The Austrian economist Joseph Schumpeter's 1942 book CAPITALISM, SOCIALISM AND DEMOCRACY influenced a generation of mid-century political scientists called the Democratic Pluralists who shaped both academic and popular conceptions of democracy in the second half of the twentieth century. CAROLE PATEMAN, PARTICIPATION AND DEMOCRATIC THEORY 3-5 (1970). Schumpeter argues that people could never agree on a set of principles that would

popular understanding of the term, and now, maybe more than ever, Americans see democracy as a form of government in which, on the day after Election Day, "once more the business of government has become the privilege of the few."[13] The few opportunities for public participation under U.S. law that survive—in things like land use processes, civilian police review boards, and participatory budgeting—tend to be highly-managed "window dressing" that often reinforces existing social hierarchies.[14]

But participatory democracy did not disappear entirely in the eighteenth century, despite being rejected by the Founders and by liberal states in Europe. More participatory conceptions of democracy continued to be debated within political philosophy, and they spread from philosophy to twentieth century social movements. In Europe, much of that philosophical tradition derives from Jean-Jacques Rousseau who, possibly influenced by his study of democratic practices among Indigenous Americans,[15] developed a theory of democracy radically opposed to the Hobbesian

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promote the common good, so the task of governing is best left to members of the ruling class—and Schumpeter is a firm believer in the merits of class hierarchy—who want to use their intellects to try to make those decisions as best as possible. JOSEPH A. SCHUMPETER, CAPITALISM, SOCIALISM AND DEMOCRACY 251-53 (5th ed. 1976). Schumpeter rejects democracy's meaning as a mode of popular participation in government and redefined the term as an "institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people's vote." *Id.* at 269. It is a model that ties democracy to the logic of the marketplace, where citizens are akin to consumers whose only role is to express their preference every few years and then, "once they have elected an individual, political action is his business, and not theirs." *Id.* at 295.

[13] HANNAH ARENDT, ON REVOLUTION 237 (1963).

[14] Michele Estrin Gilman, *Beyond Window Dressing: Public Participation for Marginalized Communities in the Datafied Society*, 91 FORDHAM L. REV. 503, 555 (2022) (arguing that participatory mechanisms are promising but risk "becoming a form of 'window dressing,' in which the views of marginalized people are solicited and ignored, while giving cover to the entities that deploy the systems.") *See* David Alan Sklansky, *Police and Democracy*, 103 MICH. L. REV. 1699, 1807-08 (2005) (describing the substantial differences between the "ambitious varieties of participatory democracy that gained currency in the 1960s and 1970s" and the "watered-down, status-quo version of participatory democracy…hidden by their common vocabulary.") Participatory budgeting programs are opportunities for the public to engage in city budgeting over a small portion of a city budget by local area within a city. Clayton P. Gillette, *The Subdivided City*, 133 YALE L.J. 2700, 2721 (2024). While appearing to make budgeting more democratic, U.S. efforts to implement participatory budgeting can end up with forms of "managed participation" that reinforce hierarchies of social power, rather than reduce them. Celina Su, *Beyond Inclusion: Critical Race Theory and Participatory Budgeting*, 39(1) NEW POL. SCI. 126, 134-36 (2017). The process can end up benefitting wealthy and gentrifying neighborhoods at the expense of the neighborhoods that are most in need while, at the same time, forcing community activists to fight over small amounts of money instead of organizing for more meaningful political power. Liza Featherstone, *Participatory Budgeting: Why Not Fix Everyone's Sink?*, SHELTERFORCE (Jun. 5, 2018), https://shelterforce.org/2018/06/05/participatory-budgeting-why-not-fix-everyones-sink/.

[15] *See* DAVID GRAEBER & DAVID WENGROW, THE DAWN OF EVERYTHING: A NEW HISTORY OF HUMANITY 536 n.49 (2021); Donald A. Grinde, *The Iroquois and the Nature of American Government*, 17 AM. INDIAN CULTURE & RES. J. 153, 166 (1993). The Haudenosaunee Confederacy, which formed in the twelfth century and reached its peak in the seventeenth century, was widely known among colonists and interested Europeans. Formed initially as a peace accord between the Cayuga, Mohawk, Oneida, Onondaga, and Seneca Nations, the Haudenosaunee Confederacy was roughly the same size as the democracy in Athens and was also anchored by face-to-face assemblies. MENSER, *supra* note 9, at 17-18. The Tuscarora Nation joined later, and the federation has historically been called the Kanonsionni, the Six Nations Confederacy, and the Iroquois Confederacy; they use the name Haudenosaunee today. *Id*. Founders like Benjamin Franklin and Thomas Jefferson were closely familiar with the Haudenosaunee Confederacy, which some argue may have been a source of inspiration for the U.S. Constitution. Robert J. Miller, *American Indian Constitutions and Their Influence on the United States Constitution,* 159(1) PROCEEDINGS OF THE AM. PHIL. SOC. 32 (2015); Samuel B. Payne, Jr., *The Iroquois League, the Articles of Confederation, and the Constitution*, 53 WILLIAM & MARY QUARTERLY 605 (1996). The Haudenosaunee had a far more inclusive understanding of who could participate in their democracy than the Athenians, both by not having a class of enslaved people deemed unfit to participate and by allowing women to participate in the democracy through a bicameral system that required approval

view of the state as a form of protection from a "nasty, brutish, and short" life of perpetual war in a cruel, violent state of nature.[16] Rousseau acknowledges the social contract offers some physical protections, but argues that it also robs humans of their "natural liberty" and that the role of government should be to maximize natural liberty by encouraging as much collective community participation as possible.[17] This kind of participation has an integrative effect, helping each participant come to see themselves as a part of the whole, where people can ultimately grow to perceive no conflict or distinction between private and public, between freedom and community.[18] Rousseau's idea that collectivity is a source of liberty rather than an infringement on individual freedom would influence a small movement of early twentieth-century intellectual, pacifist Christians—Quakers, Unitarians, Congregationalists, and others—who began to synthesize their religious views with Progressive Era liberalism and the ideas of the labor-focused, broadly socialist left.[19] John Dewey was already an established professor when this movement was developing in the 1910s, but his later political philosophy reflects a deep engagement with the ideas being debated within this group. Dewey's theories of democracy were also deeply Rousseauean, calling for greater participation in face-to-face democratic decision-making processes and arguing that democracy is not just a matter of government institutions, but "a form of moral and spiritual association"[20] between people that should be "put in force in the attitudes which human beings display to one another in all the incidents and relations of daily life."[21] He also argued that individual liberty can exist "only in rich and manifold association with others…an individualized self making a distinctive contribution and enjoying in its own way the fruits of association."[22] To Dewey, democracy requires that "means and ends" are in alignment, rejecting both liberals who would impose top-down government reforms and socialists who tolerated anti-democratic means to further egalitarian ends.[23]

In the early 1910s, when Dewey was teaching at Columbia University, a group of young Christian pacifist students at the New Brunswick Theological Seminary in New Jersey, including A.J. Muste, would travel to Columbia every week to take classes with him.[24] After completing seminary, Muste joined the Fort Washington Collegiate Church in Manhattan, where he led study groups sponsored by the YMCA on topics like child labor, peace, and Marxism.[25] At the outbreak

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by both a men's and women's council before many proposals were approved. MENSER, *supra* note 9, at 17-18. Their system had an egalitarian, communal economic component as well, as parcels of Haudenosaunee land were owned collectively and temporarily granted to families to care for based on their family size, agricultural talents, and equity principles. *Id.* at 20-21.

[16] THOMAS HOBBES, LEVIATHAN 97 (Oxford Univ. Press 1965)(1651).

[17] MENSER, *supra* note 9, at 11-12; PATEMAN, *supra* note 12, at 24-25 (1970); JEAN-JACQUES ROUSSEAU, THE SOCIAL CONTRACT 65-68 (Maurice Cranston trans., 1968).

[18] PATEMAN, *supra* note 12, at 26-27; ROUSSEAU, *supra* note 17, at 61.

[19] LEILAH DANIELSON, AMERICAN GANDHI: A.J. MUSTE AND THE HISTORY OF RADICALISM IN THE TWENTIETH CENTURY 38-39 (2014).

[20] JOHN DEWEY, *The Ethics of Democracy*, *in* THE POLITICAL WRITINGS 59, 59 (Debra Morris & Ian Shapiro eds., 1993).

[21] JOHN DEWEY, *Creative Democracy – The Task Before Us*, *in* THE POLITICAL WRITINGS 240, 242 (Debra Morris & Ian Shapiro eds., 1993).

[22] JOHN DEWEY, THE PUBLIC AND ITS PROBLEMS 150 (1946).

[23] JOHN DEWEY, *Democracy is Radical*, *in* AMERICA'S PUBLIC PHILOSOPHER: ESSAYS ON SOCIAL JUSTICE, ECONOMICS, EDUCATION, AND THE FUTURE OF DEMOCRACY 19, 22-23 (Eric Thomas Weber ed., 2021); JOHN DEWEY, *Why I Am Not a Communist*, *in* AMERICA'S PUBLIC PHILOSOPHER: ESSAYS ON SOCIAL JUSTICE, ECONOMICS, EDUCATION, AND THE FUTURE OF DEMOCRACY 88, 90-92 (Eric Thomas Weber ed., 2021).

[24] DANIELSON, *supra* note 19, at 41-43.

[25] *Id.* at 46. Muste would leave the Reformed Church, but much of the infrastructure he helped to establish

of World War I, the British Quaker Henry Hodgkin founded a group called the Fellowship of Reconciliation, which tied Quaker beliefs in pacifism and democracy[26] to a broader philosophical commitment to equality and social justice.[27] In November 1915, as the U.S. was preparing to enter World War I, Hodgkin came to a YMCA in Garden City, New York, to promote the Fellowship of Reconciliation within the community of study groups that Muste helped to found.[28]

The Fellowship of Reconciliation espoused the Deweyan view that "the means and the end are so intimately related that it is impossible to get a coordinated and co-operative world by destructive methods."[29] The group adopted Quaker Meeting traditions, like using consensus decision-making, "laying aside" issues for future reflection, and invoking the concept of "fellowship" to soften members' criticisms of other members' ideas.[30] These ideas spread after World War I, and pacifists in this tradition built cooperatives, communes, and consensus-driven anti-war organizations that all aimed to embody participatory democracy,[31] spreading their ideas through publications like *Politics*, *Direct Action*, and *Liberation*.[32]

This Christian pacifist movement and its emphasis on participatory democracy would make inroads within the labor movement, even as many union leaders were fighting against union democracy in favor of a top down, professionalized "business unionism."[33] Labor educators in union education departments, independent labor colleges, and union summer schools drew on Dewey's theories to develop participatory, self-directed pedagogy.[34] The Brookwood Labor College recruited Muste to lead it, and Muste trained Myles Horton, who came out of his experience with the goal of creating a southern school to train labor activists and educators, which he formed as the Highlander Folk School in 1932.[35] Ella Baker—who would popularize participatory democracy as a leader in the 1960s civil rights movement, most notably as an advisor to the Student Nonviolent Coordinating Committee ("SNCC")—came to Brookwood the following year, and together Baker and Horton would use the pedagogical emphasis on participatory, collective decision-making that they experienced at Brookwood as both a teaching model and an organizing tool.[36]

Horton, a working-class white southerner, grew out of this Christian pacifist movement, studying with Muste at Brookwood and, at Union Theological Seminary, with Reinhold Niebuhr, who had been a leader of the Fellowship of Reconciliation but who was increasingly questioning

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remained in the New York metropolitan region. *Id.* at 47-49.

[26] Quakers had long been tied to pacifism and democracy in England and the U.S., both stemming from their belief that God lives within every individual and that every individual is therefore sacred. FREDERICK B. TOLLES, QUAKERISM AND POLITICS 18-23 (1956). Earlier in U.S. history, Quakers were prominent abolitionists and played a leading role in developing a non-denominational, multiracial abolitionist movement. DANIEL AKST, WAR BY OTHER MEANS 56-58 (2022).

[27] AKST, *supra* note 26, at 59-60; DANIELSON, *supra* note 19, at 53-54.

[28] AKST, *supra* note 26, at 59-60; DANIELSON, *supra* note 19, at 54.

[29] FRANCESCA POLLETTA, FREEDOM IS AN ENDLESS MEETING: DEMOCRACY IN AMERICAN SOCIAL MOVEMENTS 27 (2002) (quoting Fellowship of Reconciliation member Paul Jones).

[30] *Id.* at 49.

[31] *Id.* at 28; IRWIN UNGER, THE MOVEMENT: A HISTORY OF THE AMERICAN NEW LEFT 1959-1972 15 (1974). One notable creation is non-commercial public radio, which a pacifist named Lewis Hill started as Pacifica Radio in the late 1940s after developing the concept in dialogue with other conscientious objectors during World War II. RALPH ENGELMAN, PUBLIC RADIO AND TELEVISION IN AMERICA: A POLITICAL HISTORY 44-46 (1996).

[32] POLLETTA, *supra* note 29, at 28.

[33] *Id.* at 29-30.

[34] *Id.* at 28-35.

[35] *Id.* at 36.

[36] *Id.*

the philosophy of nonviolence.[37] Horton formed the Highlander Folk School in rural Tennessee, originally with the goal of supporting the development of labor movement leaders in the South.[38] But as the labor movement turned increasingly to business unionism, Highlander began to pivot away from its focus on labor. Highlander's transition began with a series of multiracial workshops for community leaders and students, which grew into a project focused on integrating schools and communities.[39] This is where the participatory democracy of Dewey, Muste, and Horton first meaningfully crossed paths with the civil rights movement.

In 1955, Rosa Parks attended the Highlander desegregation workshop and when she returned to Montgomery, "she was so happy and felt so liberated and then as time went on she said the discrimination got worse and worse to bear *after* having…been free of it at Highlander."[40] Parks famously refused to give up her seat to a white bus passenger that December 1, and the Montgomery Bus Boycott ensued, led by Martin Luther King, Jr. and the newly-formed Southern Christian Leadership Conference ("SCLC"). SCLC received support from Christian pacifists seasoned in Gandhian non-violence tactics through their experience in the Fellowship of Reconciliation, including Glenn Smiley and Bayard Rustin.[41] Rustin saw his role as a supportive, advisory one, and he aimed to not overstep those bounds, but he later became deeply critical of SCLC, calling Dr. King's leadership "autocratic."[42] Baker agreed.[43]

The Montgomery bus boycott was a compelling tactic because the city could not force people to travel by bus despite the boycott's economic impact, but a few years later, when groups of students began holding sit-ins at segregated lunch counters, it was an affirmative demand for fair treatment, a significantly more confrontational tactic.[44] Sit-ins at segregated lunch counters were started by just a few college students in Greensboro, North Carolina but spread across the South rapidly; between February and April 1960, more than 50,000 people participated in sit-ins.[45] These were locally organized, autonomous actions not coordinated by any larger group,[46] but Highlander's influence was evident: the summer before the sit-ins began, prominent sit-in leaders from across the South attended Highlander's 1959 college workshop, including Marion Barry,

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[37] JOHN M. GLEN, HIGHLANDER: NO ORDINARY SCHOOL, 1932-1962 10 (1988). Niebuhr was moving away from pacifism and toward a philosophy of Christian "realism" that he would popularize in his 1932 book, *Moral Man and Immoral Society*. He had come to see pacifism as simply an unrealistic tool to fight the most important problems of the 1930s: capital would not realistically yield to labor without force; African Americans would never realistically have equality without force; and the militaristic, authoritarian governments rising in Europe could not be stopped without military force. IRA CHERNUS, AMERICAN NONVIOLENCE: THE HISTORY OF AN IDEA 112 (2004); Andrew J. Ballou, From Pacifism to Nonviolent Direct Action: The Fellowship of Reconciliation and Social Christianity, 1914-1947, 7-8 (2013) (Ph.D. dissertation, Boston University), http://open.bu.edu/server/api/core/bitstreams/34c435e1-afb5-41f8-a045-0e3100640c97/content. By 1940, Niebuhr distanced himself from both the Socialist Party and pacifism advocated for war against Nazi Germany. CHERNUS, *supra*, at 123.

[38] GLEN, *supra* note 37, at 10.

[39] *Id.* at 125-30.

[40] *Id.* at 136 (quoting Parks's friend Virginia Durr) (emphasis in original).

[41] Ballou, *supra* note 37, at 355-56. POLLETTA, *supra* note 29, at 40. Smiley was an officer of Fellowship of Reconciliation and Rustin was a leader of Fellowship of Reconciliation, the War Resisters League, and the Congress of Racial Equity (CORE). UNGER, *supra* note 31, at 15-16; Ballou, *supra* note 37, at 355-56.

[42] POLLETTA, *supra* note 29, at 40.

[43] *Id.*

[44] BARBARA RANSBY, ELLA BAKER AND THE BLACK FREEDOM MOVEMENT: A RADICAL DEMOCRATIC VISION 237 (1998).

[45] POLLETTA, *supra* note 29, at 57.

[46] *Id.*; VAN GOSSE, RETHINKING THE NEW LEFT: AN INTERPRETIVE HISTORY 38 (2005).

James Bevel, Julian Bond, John Lewis, and Diane Nash.[47]

Baker had been active in various leftist and civil rights groups since her youth,[48] including a cooperative economic project called the Young Negroes' Co-Operative League, which informed her opposition to organizational hierarchy.[49] She helped to foster a similar spirit at Highlander, where she spoke against "leader-centered groups" and urged instead the creation of "group-centered leadership," emphasizing the leader as a facilitator, not a person who controls the group or seeks to have clout with "Establishment People."[50] Despite having helped to found SCLC, Baker always felt herself to be "an outsider within" the group because of its hierarchy, gender bias, tendency toward unilateral decision-making, and, ultimately, what she saw as a "cult of personality" forming around Dr. King.[51]

Under the auspices of SCLC, Baker organized a convening of the student sit-in activists at her *alma mater*, Shaw University,[52] but Baker believed that SCLC leadership—Rev. Wyatt Walker, Ralph Abernathy, and Dr. King—were trying to "capture" the student activists and bring them under SCLC's control.[53] In contrast, Baker wanted to nurture the radical impulses of the young activists, urging them to see their mission as broader than desegregation and as part of a global struggle for freedom, warning them against organizational bureaucracy and reliance on charismatic public-facing leadership, and counseling the students to watch out for manipulation by movement elders.[54] In the words of Julian Bond, Baker "didn't say 'Don't let Martin Luther King tell you what to do,'…but you got the real feeling that that's what she meant."[55] The students formed SNCC as a separate body from SCLC, adopted a broad political agenda, and emphasized participatory democracy, all largely inspired by Baker, who remained involved in SNCC as an "adult advisor," but not SNCC's leader.[56]

Baker was deeply committed to participatory democracy because she wanted to make sure that she and others who might be outsiders in a world of male leaders would be fully heard through an inclusive, consensus-oriented process.[57] The philosophy was not just to let the members vote, but to have the marginalized members of the group have their voices centered, so that the views of all participants could be heard.[58] This required a change in mindset; individual members needed to develop new interpersonal relationships based on a more humane order than the exploitive relations of the larger culture.[59] She sought to instill in SNCC members an insistently democratic way of living, being, and interacting that in itself reflected a deep commitment to inclusivity.[60]

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[47] POLLETTA, *supra* note 29, at 64.

[48] RANSBY, *supra* note 44, at 6.

[49] JESSICA GORDON NEMBHARD, COLLECTIVE COURAGE: A HISTORY OF AFRICAN AMERICAN COOPERATIVE ECONOMIC THOUGHT AND PRACTICE 119-20 (2014).

[50] CAROL MUELLER, *Ella Baker and the Origins of "Participatory Democracy"*, *in* THE BLACK STUDIES READER 79, 85 (Jacqueline Bobo et al. eds., 2004).

[51] *Id.* at 4-6; JOANNE GRANT, ELLA BAKER: FREEDOM BOUND 38 (1998).

[52] RANSBY, *supra* note 44, at 239-42.

[53] *Id.* at 242-43.

[54] *Id.* at 244-46.

[55] *In Memoriam: Ella Baker*, SNCC LEGACY PROJECT, https://sncclegacyproject.org/in-memoriam-ella-baker/.

[56] For a detailed history of the creation of SNCC, *see* CHARLES M. PAYNE, I'VE GOT THE LIGHT OF FREEDOM: THE ORGANIZING TRADITION AND THE MISSISSIPPI FREEDOM STRUGGLE 67-102 (1995); *see generally* MUELLER, *supra* note 50.

[57] RANSBY, *supra* note 44, at 309-10.

[58] *Id.* at 368.

[59] *Id.* at 369.

[60] *Id. at* 258.

Years before "the personal is political" became a slogan or prefigurative politics were theorized in those terms, Baker prioritized "interaction, discussion, debate, and consensus" above lobbying and electoral politics.[61] This did not mean that each person got to direct every decision, but rather that everyone was encouraged to participate; facilitators aimed to not direct the conversation but to ask questions to help members clarify and refine their positions, and aimed for responsibilities and procedures to be clear to all.[62] Above all, Baker pushed for SNCC to focus on building capacity and leadership in local Black communities, not just on mobilizing people to show up for specific demonstrations or events.[63] Having big rallies and giving speeches on television was not as important as what she called "spadework": the behind-the-scenes, interpersonal community building that prepares the ground for social change, just as tilling the dirt can prepare it for growing something new.[64]

Baker's model would become a significant inspiration for the emerging, largely white student New Left as well. Students for a Democratic Society ("SDS") formed at the University of Michigan in 1959 when graduate student Al Haber renamed an older socialist student organization—the Student League for Industrial Democracy ("SLID"), a small student branch of the League for Industrial Democracy.[65] A conference Haber had planned in Ann Arbor on "Human Rights in the North" came to focus on the student sit-in movement, and the conference attracted civil rights leaders from across the country, including Bayard Rustin and James Farmer, leaders from the Congress of Racial Equality ("CORE") and the NAACP, as well as Tom Hayden, the undergraduate student editor of the *Michigan Daily*.[66] Hayden studied with a Michigan political philosopher named Arnold Kaufman, who had recently coined the phrase "participatory democracy," articulating an individualistic idea of participatory democracy that sought "the development of human powers of thought, feeling, and action."[67]

Haber and Hayden began to travel around the country to find like-minded students to join SDS.[68] Hayden went to Georgia and Mississippi and was deeply inspired by SNCC's participatory organizing model, later reflecting: "Mechanics, maids, unemployed people taking things into their own hands. I kept wondering, 'where did these people come from? Really, where have I been?'"[69]

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[61] *Id.* at 370. "The personal is political" was a slogan of second wave feminism, popularized by Carol Hanisch's essay *The Personal is Political*, written in 1969 and published in 1970, though Hanisch says the phrase itself likely was written by her editors, Shulie Firestone and Anne Koedt. Carol Hanisch, *Introduction to The Personal is Political* 1, 1 (Jan. 2006), https://www.carolhanisch.org/CHwritings/PersonalIsPol.pdf. Prefigurative politics are forms of political action in which the processes used in organizing and building a political movement are designed to already be constructing the future world the movement wants to see. For early definitions of prefiguration, *see* Carl Boggs, *Marxism, Prefigurative Communism, and the Problem of Workers' Control*, 6 RADICAL AM. 99 (1977-1978); Wini Breines, *Community and Organization: The New Left and Michels' "Iron Law"*, 27(4) SOC. PROBS. 419, 421 (1980).

[62] POLLETTA, *supra* note 29, at 55-57.

[63] *Id.*

[64] Payne, *supra* note 55, at 85.

[65] JAMES MILLER, DEMOCRACY IS IN THE STREETS: FROM PORT HURON TO THE SIEGE OF CHICAGO 22-36 (1987); KIRKPATRICK SALE, SDS 7-13 (1973). The Student League for Industrial Democracy had just three chapters, at Columbia, Yale, and Michigan; the chapters at Columbia and Yale did not even use the name SLID, they went by "John Dewey Discussion Club." *Id.* This convention reflects the continuing importance of Dewey to the intellectual left even into the 1950s and 1960s.

The author has no knowledge of a familial relationship with Haber.

[66] SALE, *supra* note 65, at 13.

[67] *See* Arnold S. Kaufman, *Human Nature and Participatory Democracy*, 3 NOMOS: AM. SOC'Y POL. LEGAL PHIL. 266, 272 (1960).

[68] POLLETTA, *supra* note 29, at 125.

[69] MILLER, *supra* note 65, at 57.

Much of SDS's initial work was inspired by and related to the work of SNCC.[70] Coming out of a traditional socialist organization, SDS wanted to emphasize that they were a *new* left, and when Hayden began to draft a mission statement for the group, he sought inspiration outside of the dominant Marxist-Leninist tradition, instead drawing on the writings of Dewey and Muste and his observations of SNCC.[71] Hayden wrote a first draft of a mission statement. A group of 59 students and a few advisors met in a union work camp in Port Huron, Michigan, to develop Hayden's draft into an official group mission statement.[72]

The revised draft that came out of their collaborative review, which would become known as the Port Huron Statement, became the key 1960s text that brought the phrase "participatory democracy" from Kaufman to the general public.[73] The first mimeographed copies of the Port Huron Statement emerged in July 1962 and "[f]rom the start…had an almost mythic stature."[74] As a phrase, "participatory democracy" captured readers' imaginations like a "stick of conceptual dynamite," but the term was just vague enough that it seemed to simultaneously appeal to people who sought a return to the Founders' ideals, modest social reform, and revolutionary movement politics.[75] This broad appeal sparked a sudden "participation explosion."[76] Participatory democracy, however it was interpreted, was in the air and it quickly became a huge influence on the "popular political vocabulary."[77] Jumping on the trend, the Johnson Administration did not call for some limited opportunities for community participation when it drafted the text of CAP, but mandated that programs receiving funding would be "developed, conducted, and administered with the maximum feasible participation of the residents of the areas and members of the groups served."[78] This "maximum feasible participation" mandate seems to almost echo the language of SDS or the organizing approach taken by Baker,[79] but the Johnson Administration had a completely different understanding of how participatory democracy would function in CAP.

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[70] SALE, *supra* note 65, at 13.

[71] POLLETTA, *supra* note 29, at 126; SALE, *supra* note 65, at 25. Although associated with SDS in the U.S., the term New Left first appeared in the U.K., from a group of socialist students and younger intellectuals around the *New Left Review* who sought to reinvigorate the Labor Party, including the later prominent cultural theorist, Stuart Hall. UNGER, *supra* note 31, at 18; GOSSE, *supra* note 46, at 4-5; Stuart Hall, *Life and Times of the First New Left*, 61 NEW LEFT REV. 177 (2010).

[72] MILLER, *supra* note 65, at 13; POLLETTA, *supra* note 29, at 126. Hayden began the first draft from a jail cell in Albany, Georgia, after travelling South to support the sit-in movement on a "Freedom Ride," and was inspired by the students coming from all over the country, risking jail or worse, to support the civil rights movement. Tom Hayden, *Participatory Democracy: From the Port Huron Statement to Occupy Wall Street*, NATION (Mar. 27, 2012), https://www.thenation.com/article/archive/participatory-democracy-port-huron-statement-occupy-wall-street/.

[73] MENSER, *supra* note 9, at 27. The discussion of participatory democracy in the Port Huron Statement reflects a tension that might be more broadly present in the student left of the 1960s, a tension between a desire for a collectivist politics and a commitment to authenticity, individualism, and self-fulfillment: "politics has the function of bringing people out of isolation and into community, thus being a necessary, though not sufficient, means of finding meaning in personal life." STUDENTS FOR A DEMOCRATIC SOCIETY, PORT HURON STATEMENT 7 (2d ed. 1964), https://archive.org/details/PortHuronStatement/Phs00-211Copy/page/n1/mode/2up.

[74] MILLER, *supra* note 65, at 141.

[75] *Id.* at 152.

[76] GABRIEL ALMOND & SIDNEY VERBA, THE CIVIC CULTURE: POLITICAL ATTITUDES AND DEMOCRACY IN FIVE NATIONS 2 (1965).

[77] PATEMAN, *supra* note 12, at 1.

[78] Economic Opportunity Act of 1964, Pub. L. No. 88-452, § 202(a)(3) (1964).

[79] *See* JAMES A. MORONE, THE DEMOCRATIC WISH: POPULAR PARTICIPATION AND THE LIMITS OF AMERICAN GOVERNMENT 227 (rev. ed., 1998) (arguing that "to many observers, the loose organization and participatory ethos of [CAP] reflected the style of the civil rights movement from the start").

II. The Creation of the Community Action Program

The War on Poverty emerged at a time when U.S. urban policy was due for a serious reckoning. The Depression had brought widespread home foreclosures in cities and the federal government had intervened through massive efforts: the Home Owners' Loan Act of 1933 created the Home Owners' Loan Corporation, which offered refinancing for home mortgages;[80] the National Housing Act of 1934 created the Federal Housing Administration to insure mortgage loans;[81] the United States Housing Act of 1937 created the U.S. Housing Authority, which provided loans to state and local authorities to create public housing;[82] the Federal National Mortgage Association ("Fannie Mae") was created to provide capital for housing finance through the creation of the secondary mortgage market in 1938;[83] and, after World War II, the Veterans Administration guaranteed mortgages for veterans through the Servicemen's Readjustment Act (the "GI Bill").[84] But through both *de jure* accommodation of Jim Crow states and privately-enforced segregationist mechanisms like redlining and blockbusting, these programs expanded white homeownership in the suburbs while Black and other racially-marginalized communities in cities were given little or no aid, stripping cities of their tax bases and deepening geographic inequalities.[85]

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[80] Home Owners' Loan Act of 1933, 12 U.S.C. §§ 1461-1468 (1934).

[81] National Housing Act of 1934, Pub. L. 73-479, 48 Stat. 1246 (1934).

[82] United States Housing Act of 1937, Pub. L. 75-412, 50 Stat. 888 (1937).

[83] National Housing Act Amendments of 1938, ch. 13, § 1, 52 Stat. 8. (1938).

[84] Servicemen's Readjustment Act, Pub. L. 78-346, 58 Stat. 284 (1944).

[85] The Home Owners' Loan Corporation ("HOLC") helped homeowners obtain mortgage refinancing while simultaneously creating a uniform system for appraising real estate in order to underwrite its loans. KENNETH T. JACKSON, CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES 196 (1985). To assess property values, HOLC developed a ranked list of racial and ethnic groups to gauge their value, creating a scale that ranked ethnicities from the top category—English, Germans, Scotch, Irish, and Scandinavians—to increasingly racialized categories at the end of the list: "(7) Russians, Jews (lower class); (8) South Italians; (9) Negroes; (10) Mexicans." Calvin Bradford, *Financing Home Ownership: The Federal Role in Neighborhood Decline*, 14 URB. AFF. Q. 313, 323 (1979); Charles L. Nier, III, *Perpetuation of Segregation: Toward a New Historical and Legal Interpretation of Redlining Under the Fair Housing Act*, 32 J. MARSHALL L. REV. 617, 622-23 (1999).

The Federal Housing Administration ("FHA") stimulated new mortgage issuance by insuring new private mortgages that met standardized terms, dramatically hastening the growth of inner-ring suburbs through an "antiurban bias" that favored single-family homes and new construction over the repair of existing housing stock. Jackson, *supra*, at 207-08; Leonard S. Rubinowitz & Elizabeth Trosman, *Affirmative Action and the American Dream: Implementing Housing Policies in Federal Homeownership Programs*, 74 NW. U. L. REV. 491, 497-510 (1979). The FHA continued the HOLC's ethnicity-based property assessments but aimed for slightly more subtlety: the FHA Underwriting Manual that was in use from 1934 to 1947 counseled against making loans in "crowded neighborhoods" full of "older properties," that might be home to "inharmonious racial or nationality groups." JACKSON, *supra*, at 207-08; Robert W. Collin & Robin A. Morris, *Racial Inequality in American Cities: An Interdisciplinary Critique*, 11 NAT'L BLACK L.J. 177, 182-83 (1989). The maps developed to demarcate neighborhoods that were less desirable under both HOLC and the FHA used red ink to clearly indicate less desirable areas, and this process of "redlining" led private banks to refuse to lend in those communities on favorable terms. JACKSON, *supra*, at 202-03. The Veterans Administration had a direct loan program and a mortgage insurance program, both of which engaged in similar redlining practices. Rubinowitz & Trosman, *supra*, at 515 n.88.

"Blockbusting" is a related practice, in which real estate speculators identified white urban communities that were adjacent to communities of color, made representations that people of color were moving to their neighborhoods and causing home values to sink; they would purchase homes from white residents at a discount, and then flip those homes to Black people at a substantial markup. Dmitri Melhorn, *A Requiem for Blockbusting: Law, Economics, and Race-Based Real Estate Speculation*, 67 FORDHAM L. REV. 1145, 1151-53 (1998). The process was widespread, inflamed racial tensions, and increased residential segregation. *Id.* at 1153-56. The Public Housing Authorities created by the United States Housing Act of 1937 also furthered segregation by siting most low-income housing in communities of

Following years of urban disinvestment and suburban growth, advocates for "slum clearance," buoyed by the lobbying power of industry associations of urban planners and real estate lenders,[86] successfully pushed for the National Housing Act of 1949, which provided grants and other support for "Urban Renewal"—"the clearance of slums and blighted areas and the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family."[87] Urban Renewal let states designate an area as blighted, which allowed municipal agencies to join with private investors to create a plan of investment and use municipal powers like public finance, land use regulation, and eminent domain to raze and rebuild the area.[88] The Urban Renewal process led to widespread displacement of low-income, largely Black urban residents by destroying affordable rental housing in low-income neighborhoods, with the goal of replacing it with single-family housing and facilities for wealthier, typically white, populations.[89] These impacts were obvious to commentators across the political spectrum,[90] as they were to residents of low-income urban neighborhoods themselves, who mockingly referred to Urban Renewal as "Negro Removal."[91]

While the stated goal of Urban Renewal was to displace high-density, low-income, "blighted" neighborhoods with lower-density, higher-income neighborhoods, Urban Renewal succeeded at tearing down residential properties in communities of color and incentivizing white people to move to the suburbs, but was far less successful at replacing housing taken by condemnation with new private development.[92] In many cities, housing was eliminated and, following the passage of the Federal-Aid Highway Act of 1956, new urban expressways were constructed to encourage white commuters to come downtown from the suburbs, often furthering segregation by using infrastructure to physically separate neighborhoods.[93] After decades of deeply segregationist federal policies ransacked urban communities of color, cities were left with poor housing conditions and inadequate social services, but with very few wealthy residents to pay taxes, forcing cities to take on more and more debt "in a frenzied quest to head off the day of judgment."[94] This serious economic crisis would not be addressed directly, but instead would bleed into popular narratives about a different, far more dubious kind of urban crisis: the "crisis" of culture, family, and morality of low-income people of color, and of Black people in cities in particular.[95] The most

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color. Jon C. Dubin, *From Junkyards to Gentrification: Explicating a Right to Protective Zoning in Low-Income Communities of Color*, 77 MINN. L. REV. 739, 752 (1993); Comment, *The Limits of Litigation: Public Housing Site Selection and the Failure of Injunctive Relief*, 122 U. PA. L. REV. 1330, 1337-38 (1974).

[86] Wendell E. Pritchett, *The "Public Menace" of Blight: Urban Renewal and the Private Uses of Eminent Domain*, 21 YALE L. & POL'Y REV. 1, 20-21 (2003).

[87] Housing Act of 1949, § 2, Pub. L. 81-171, 63 Stat. 413 (1949).

[88] WILLIAM H. SIMON, THE COMMUNITY ECONOMIC DEVELOPMENT MOVEMENT: LAW, BUSINESS AND THE NEW SOCIAL POLICY 8 (2001).

[89] *Id.* at 8-9; Pritchett, *supra* note 85, at 32-37.

[90] *See* Herbert J. Gans, *The Failure of Urban Renewal*, 39(4) Commentary 29, 29 (Apr. 1965) (citing criticisms from the conservative scholar Martin Anderson, progressive social critic Jane Jacobs, and the novelist Norman Mailer, along with data from the Urban Renewal Administration).

[91] DOUGLAS S. MASSEY & NANCY A. DENTON, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS 56 (1993).

[92] Pritchett, *supra* note 86, at 32-37.

[93] RICHARD ROTHSTEIN, THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA 127-131 (2017). *See* Federal-Aid Highway Act of 1956, Pub. L. 84-627 (1956).

[94] FREDERICK K. HUNTINGTON-VIGMAN, CRISIS OF THE CITIES 42 (1955).

[95] Timothy Weaver, *Urban Crisis: The Genealogy of a Concept*, 54(9) URBAN STUDIES 2039, 2045. This urban crisis narrative would later find perhaps its fullest articulation in the so-called Moynihan Report, Daniel Moynihan's 1965 study that argues that centuries of racism, slavery, and Jim Crow had led to a "tangle of pathology" at the level

influential of these crisis narratives in the early 1960s came from Michael Harrington, a political writer who, in a strange coincidence, was also a member of the League of Industrial Democracy, SDS's parent group, and a vocal opponent of the Port Huron Statement who tried to stop it from being released.[96] Harrington published *The Other America: Poverty in the United States* in early 1962, and it quickly became "obligatory reading in Washington's Democratic policy circles."[97] Advisors to Kennedy and Johnson were deeply influenced by Harrington's ideas, and they would help shape the conceptual framework of the War on Poverty.

Harrington argues that poverty is not caused by a lack of income or personal pathology, but rather by an all-encompassing "culture of poverty" that traps people in poverty against their will. He asserts that poor education means a low-paying job, which means low-quality housing, which can affect health, which means problems with family stability, which can affect employment and housing, each factor building on the others. As a result, problems can only be remedied if attacked on different fronts simultaneously; working on health or housing in isolation does little good.[98] Harrington's conclusion was that the existing government bureaucracies are too siloed and lack the flexibility and dynamism necessary to break this cycle.[99] While that part of Harrington's thesis might have some merit, his broader argument relies on a deeply problematic dichotomy, asserting that earlier generations of low-income Irish, Italian, and Jewish communities were able to break free from poverty because they had strong senses of community, but Black and Latino neighborhoods lacked community. The "culture of poverty" had so taken hold of communities of color that they had become full of "people who are lost to themselves and to society."[100] Unfortunately, Harrington's argument about the need for holistic approaches to fighting poverty had only a brief influence on policy, but his theory that communities of color were ensnared in an intractable "culture of poverty" became a kind of quasi-sociological justification for longstanding

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of the family and community—unemployed fathers, high crime, a lack of male role models—that slowed progress toward more fulsome civil rights. DANIEL P. MOYNIHAN, THE NEGRO FAMILY: THE CASE FOR NATIONAL ACTION 1-4, 29-38 (1965). Moynihan's study is among the most controversial texts of the twentieth century, one that has continued to spark debate in the twenty-first century. *See, e.g.,* JAMES T. PATTERSON, FREEDOM IS NOT ENOUGH: THE MOYNIHAN REPORT AND AMERICA'S STRUGGLE OVER BLACK FAMILY LIFE FROM LBJ TO OBAMA (2010); *Symposium Issue: The Moynihan Report: 50 Years Later*, 8 GEO. J. OF L. & MOD. CRIT. RACE PERSPECTIVES (2016). The phrase "blaming the victim" was coined by William Ryan in response to the report. *See* WILLIAM RYAN, BLAMING THE VICTIM (1971).

[96] SALE, *supra* note 65, at 39; DAVID ZAREFSKY, PRESIDENT JOHNSON'S WAR ON POVERTY: RHETORIC AND HISTORY 24 (1986). Harrington was present at Port Huron as a representative of the League of Industrial Democracy ("LID") and was no fan of the youthful interest in participatory democracy. He told the convention their statement would make LID "go through the roof," pushing for the group to take a more moderate and explicitly anti-communist stance, and, upon his return to New York, immediately "gave LID a blow by blow report of what the convention had wrought." SALE, *supra* note 65, at 39. LID called Haber, Hayden, and other leaders of SDS into a hearing before LID, and SDS members were left feeling that "America's best liberals were on the lip of red-baiting us out of existence….[It] was Kafkaesque." *Id.* at 39-41 (quoting SDS's Bob Ross). Harrington later became a founder of the Democratic Socialist Organizing Committee, which became the Democratic Socialists of America. Harold Meyerson, *Why Michael Harrington Matters*, JACOBIN (Jul. 31, 2019), https://jacobin.com/2019/07/michael-harrington-dsa-dsoc-democratic-socialism.

[97] BENJAMIN LOOKER, A NATION OF NEIGHBORHOODS: IMAGINING CITIES, COMMUNITIES, AND DEMOCRACY IN POSTWAR AMERICA 141 (2015). *See* James L. Sundquist, *Origins of the War on Poverty*, *in* ON FIGHTING POVERTY: PERSPECTIVES FROM EXPERIENCE 6, 7 (James L. Sundquist ed., 1969) (arguing that Harrington's book caused Kennedy to want to pair his tax cut with a new poverty program).

[98] MICHAEL HARRINGTON, THE OTHER AMERICA: POVERTY IN THE UNITED STATES 162 (50th anniv. ed., 1997).

[99] Tara J. Melish, *Maximum Feasible Participation of the Poor: New Governance, New Accountability, and a 21st Century War on the Sources of Poverty*, 13 YALE HUM. RTS. & DEV. L.J. 1, 20 (2010).

[100] HARRINGTON, *supra* note 98, at 10-11.

racist stereotypes, and this may have been the more lasting legacy of his book.[101]

A less offensive but somewhat aligned analysis was emerging at the same time out of studies of "juvenile delinquency." In the prior decade, the Eisenhower Administration saw juvenile delinquency as a health problem; young troublemakers were sick and in need of social-psychological treatment.[102] But in 1960, Richard Cloward and Lloyd Ohlin from the New York School of Social Work at Columbia University criticized this theory in their book *Delinquency and Opportunity*, arguing that delinquency is not an individual pathology, but a social problem that derives from the hopelessness of "slum communities."[103] Soon after the 1960 election, President-elect Kennedy asked his friend David Hackett to develop a program to combat delinquency. Hackett, with Ohlin and, later, Richard Boone, began to explore tools to combat delinquency by offering education and employment opportunities—the "opportunity theory"—to young people in low-income neighborhoods through the President's Committee on Juvenile Delinquency and Youth Crime.[104]

The idea of a nimbler, more responsive social services sector appealed to the Ford Foundation, which sought to explore how community-centered solutions to urban issues that embraced the "culture of poverty" hypothesis from Harrington and "opportunity theory" from Cloward and Ohlin might work.[105] The Ford Foundation in the early 1960s was the largest private foundation in the world, and had become closely intertwined with Democratic Party leadership, growing into a "domestic policy incubator" for the Kennedy administration, initiating and piloting social programs before they would be implemented more widely.[106] Ford Foundation leadership, politically disinclined to fund anything that might question existing social and economic hierarchies,[107] framed the problems of cities as not rooted in long histories of racism, economic exploitation, and segregationist urban policy, but geography—the problem was simply that certain areas have had the resources drained from them.[108]

To combat the "culture of poverty" that arose in such geographies, Ford created Gray Areas, a new program that would rely on a new local institution, a "Community Action Agency," that would facilitate the coordination of programs and the assimilation of local residents from within their own neighborhoods.[109] Ford would fund its pilot in four cities—Oakland, Philadelphia, Boston, and New Haven—and it would, along with a similar anti-delinquency program in New York connected to Cloward and Ohlin called Mobilization for Youth (MFY), generate attention from

[101] This dichotomy "became a pervasive motif for liberal urban commentary," in which "ethnic" neighborhoods became "situated as the very prototype of neighborhood health," where hard work and community lifted immigrants into the middle class, while racialized communities were unable to take this step. LOOKER, *supra* note 97, at 142-143. Many commentators tried to identify some cultural or social-psychological reason for this, sometimes seeming to argue that Black people in U.S. cities mysteriously lack a culture at all: "Without a special language and culture, and without the historical experiences that create an élan and a morale, what is there to lead them to build a life, to patronize their own?" NATHAN GLAZER & DANIEL P. MOYNIHAN, BEYOND THE MELTING POT: THE NEGROES, PUERTO RICANS, JEWS, ITALIANS, AND IRISH OF NEW YORK CITY 33 (1962). The bizarre argument that Black people might simply lack values and culture "went virtually uncontested in the early avalanche of praise from white reviewers" and would later become part of the narratives around the "urban crisis" of the 1960s. LOOKER, *supra* note 97, at 147.

[102] Sundquist, *supra* note 97, at 9-11.

[103] *Id.* at 11.

[104] *Id.*

[105] ROBERT FISHER, NEIGHBORHOOD ORGANIZING IN AMERICA 119 (2d ed. 1994).

[106] KAREN FERGUSON, TOP DOWN: THE FORD FOUNDATION, BLACK POWER, AND THE REINVENTION OF RADICAL LIBERALISM 5-6 (2013).

[107] *Id.* at 6-7.

[108] *Id.* at 89-90.

[109] *Id.* at 59.

urban policy experts in and around the Kennedy and Johnson Administrations.[110] Both Administrations "cultivated an antibureaucratic and community-oriented ethic that valued experimentation, flexibility, and decenteredness. It sought the guidance of elite experts, to be sure, but it also sought out the knowledge and desires of 'the other America.'"[111] But the turn to marginalized communities in their search for "innovation, *new* ideas, *new* imaginations"[112] was intended to be a modest modification, a technocratic tweak, a slight check on expert-designed initiatives. In the early 1960s, MFY and Gray Areas seemed to strike the right balance.

MFY and Gray Areas were not bold experiments in participatory democracy.[113] Community Action Agencies were, consistent with "opportunity theory" and the "culture of poverty" thesis, aiming to coordinate modest sources of funding for more efficient use outside of entrenched bureaucracies.[114] They were formed as private non-profit corporations that would develop plans with input from city government and neighborhood leaders,[115] but the main program goal was to replace messy disagreements, factionalism, and unending bureaucracy with expert-driven processes led by sophisticated leaders from academia, government, and Ford Foundation staff; opportunities for community input were a part of the program design, but were never a significant focus.[116]

Although Kennedy picked Johnson as his running mate, he did not totally trust Johnson, his Southern rival for the 1960 Democratic Party nomination, and Johnson was never a part of Kennedy's inner circle of advisors.[117] Just days after President Kennedy was assassinated in November 1963, Walter Heller, Kennedy's chief economist, began to talk to President Johnson about ideas for an anti-poverty effort that had been discussed in Kennedy's Council of Economic Advisors, ideas along the lines of Gray Areas and MFY.[118] Johnson was interested, perhaps to tie himself to Kennedy's legacy, possibly out of a genuine desire to reduce poverty,[119] probably because Johnson felt he needed to do something in response to both the growing civil rights movement and the growing backlash to it,[120] but above all out of a political interest in courting urban Black voters, as the Democrats were hemorrhaging white voters in the South due to the

[110] *Id.*; ROBERT HALPERN, REBUILDING THE INNER CITY: A HISTORY OF NEIGHBORHOOD INITIATIVES TO ADDRESS POVERTY IN THE UNITED STATES 89 (1995).

[111] MARK KRASOVIC, THE NEWARK FRONTIER: COMMUNITY ACTION IN THE GREAT SOCIETY 7 (2016).

[112] *Id.*

[113] FERGUSON, *supra* note 106, at 60.

[114] HALPERN, *supra* note 110, at 92.

[115] *Id.* at 92-93.

[116] At the Gray Areas cite in New Haven, for example, the Community Action Agency hired Mitchell Sviridoff—a former president of the Board of Education with close ties to the New Haven mayor and to Ford Foundation leadership—to be the director, where he developed programs around education, job training, and employment opportunities, excluding "local schools, social service and health departments…and poor people themselves" from input into program design. *Id.* at 95. Sviridoff would go on to help draft the Economic Opportunity Act. George Adler, *Community Action and Maximum Feasible Participation: An Opportunity Lost But Not Forgotten for Expanding Democracy at Home*, 8 NOTRE DAME J.L. ETHICS & PUB. POL'Y 547, 568 (1994).

[117] JEFF SHESOL, MUTUAL CONTEMPT: LYNDON JOHNSON, ROBERT KENNEDY, AND THE FEUD THAT DEFINED A DECADE 64-78 (1997).

[118] FERGUSON, *supra* note 106, at 62-63; MICHAEL L. GILLETTE, LAUNCHING THE WAR ON POVERTY: AN ORAL HISTORY 1-10 (2d ed., 2010); Sundquist, *supra* note 97, at 21.

[119] ZAREFSKY, *supra* note 96, at 24-25.

[120] Historian Michael Katz argues that the War on Poverty was principally a response to three major civil rights events of 1963: the Birmingham campaign, the March on Washington, and the bombing of the Sixteenth Street Baptist Church in Birmingham that killed four Black girls. MICHAEL B. KATZ, THE UNDESERVING POOR: AMERICA'S ENDURING CONFRONTATION WITH POVERTY 106-10 (2d ed. 2013).

national party's support, tepid as it was, for integration.[121] Johnson wanted to act quickly, with the country saddened by Kennedy's death and the next presidential election just a year away.[122] Less than two months later, President Johnson declared an "unconditional war on poverty in America" in his January 1964 State of the Union address.[123] He quickly appointed Sargent Shriver, Kennedy's brother-in-law and the first leader of the Peace Corps, to lead a task force to develop legislation toward that end.[124] Shriver enlisted the support of Adam Yarmolinsky from the Department of Defense, Daniel Moynihan from the Department of Labor, and James Sundquist from the Department of Agriculture to be his initial team to prepare the bill, but that group would expand to include people from across the administration, along with outside urbanists, some affiliated with the Ford Foundation.[125]

The bill this team drafted, which became the Economic Opportunity Act of 1964 (the "EOA"), marked a sharp break from past anti-poverty initiatives. It was focused not on welfare, but on enhancing opportunity and preparing people to take advantage of those opportunities, and it envisioned the War on Poverty being fought mostly within low-income communities themselves.[126] The bill was a hodgepodge of programs: job training and education, college work-study programs, adult education programs, programs for children in poverty, a loan program for rural families and assistance for migrant agricultural workers, funding for very small businesses, and the Volunteers in Service to America (VISTA) program, a sort of domestic Peace Corps.[127] Hackett and Boone from the President's Committee on Juvenile Delinquency and Youth Crime suggested that community organizations play a role in the effort,[128] and Heller and Shriver agreed to support a "community action" pilot that, like Gray Areas and MFY, would help coordinate funds outside of city bureaucracies.[129]

But in the hurried drafting process, this "community action" component of the EOA changed from a small pilot program to become the key mechanism that held together all of the disparate EOA programs.[130] Johnson promoted the draft legislation as a more conservative program than cash assistance to help the poor: it would not be a handout but would instead create new

[121] ZAREFSKY, *supra* note 96, at 24-25. The Democratic Party had been somewhat non-committal on civil rights issues because they were controversial and divided the party's support, but the growing civil rights movement, the controversy over *Brown v. Board of Education,* and the Montgomery bus boycott pushed the party to offer limited support for civil rights, causing them to lose white voters in the South and making Democratic constituencies in urban areas in the North electorally essential, ultimately leading to a "rapid-fire…series of service programs for the 'inner city.'" FRANCES FOX PIVEN & RICHARD A. CLOWARD, REGULATING THE POOR: THE FUNCTIONS OF PUBLIC WELFARE 251-56 (1971). Many Republicans saw the War on Poverty as pure politics, just an attempt to "buy" the votes of the poor. MARK MCLAY, THE REPUBLICAN PARTY AND THE WAR ON POVERTY 14 (2021).

[122] Sundquist, *supra* note 97, at 25.

[123] President Lyndon Baines Johnson, Annual Message to the Congress on the State of the Union (Jan. 8, 1964), https://www.lbjlibrary.org/object/text/annual-message-congress-state-union-01-08-1964. Kennedy and members of his Council of Economic Advisors ("CEA") had been inspired to take action against persistent poverty prior to the assassination, in part because of Heller's influence. ZAREFSKY, *supra* note 96, at 24-25.

[124] Sundquist, *supra* note 97, at 25; Martha J. Bailey & Nicolas J. Duquette, *How Johnson Fought the War on Poverty: The Economics and Politics of Funding at the Office of Economic Opportunity*, 74 J. ECON. HIST. 351, 355-357 (2014).

[125] JOHN C. DONOVAN, THE POLITICS OF POVERTY 29-30 (1967).

[126] HALPERN, *supra* note 110, at 109.

[127] Economic Opportunity Act of 1964, Pub. L. No. 88-452, 78 Stat. 508 (1964).

[128] Sundquist, *supra* note 97, at 22-23.

[129] Adam Yarmolinsky, *The Beginnings of OEO*, *in* ON FIGHTING POVERTY: PERSPECTIVES FROM EXPERIENCE 34, 35 (James L. Sundquist ed., 1969).

[130] Robert L. Rabin, *Federal Regulation in Historical Perspective*, 38 STAN. L. REV. 1189, 1273 (1986).

opportunities, turning "tax-eaters into taxpayers."[131] The EOA's focus on poverty without any mention of race, civil rights, or cash assistance allowed the Johnson Administration the political flexibility to portray the bill as totally race-neutral or as deeply connected to their civil rights agenda, depending on their audience.[132]

President Johnson and Shriver urged Congressional Democrats to reject Republican amendments to the bill and the EOA was approved with relatively little controversy and signed into law in August 1964.[133] The EOA would come to be viewed as the central initiative of the War on Poverty, "the most dramatic and highly publicized of the Great Society's programs."[134] CAP quickly became the most controversial part of the EOA, one that would receive $2.64 billion (over $25 billion in current dollars), half of the EOA's funding between 1965 and 1968.[135]

The statutory language of CAP authorizes the creation and funding of "community action programs" that (1) use public or private resources in a geographical area (2) to provide services to work toward the alleviation of poverty, that (3) are "developed, conducted, and administered with the maximum feasible participation of residents of the areas and members of the groups served," and (4) are administered by one or more public or private nonprofit agencies.[136] Much depends on the third prong of that definition—the "maximum feasible participation" of residents in communities that would receive funding. But within the Johnson Administration, there was little consensus on how, exactly, "maximum feasible participation" would work.[137]

The group drafting the legislation, many of whom would take positions within the federal body administering the EOA, the Office of Economic Opportunity ("OEO"), after the EOA's passage, did not agree on the goals for CAP: some thought it could be a planning mechanism, some saw it as a way of encouraging productive experimentation, some as a way to coordinate the work of local government and other interests in a new, less bureaucratic forum, and some as a form of social therapy that would energize apathetic local residents.[138] The details of "community action simply [were] not much on the minds" of the drafters of this legislation, even though they made CAP central to its operations.[139]

Many of the drafters were influenced by "culture of poverty" arguments or otherwise had paternalistic assumptions that low-income communities of color would be apathetic and lack the kind of community pride that would lead to meaningful participation in CAP. These assumptions led the Johnson Administration to ignore basic questions about how participation in CAP would

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[131] President Johnson, telephone conversation with House Appropriations Committee Chair George Mahon (Jul. 29, 1964), https://lbjtapes.org/conversation/turning-tax-eaters-taxpayers. The term "tax-eaters" was coined by Ludwig von Mises in 1953, who used it to refer to the railways in the mixed economies of Europe and the subsidized New York City subway, contrasting them with private U.S. railways that did not rely on public support but charged market prices to cover their expenses. LUDWIG VON MISES, ECONOMIC FREEDOM AND INTERVENTIONISM 73-75 (1990). Private U.S. railroads would be bailed out by the government in the Rail Passenger Service Act, which created Amtrak. Pub. L. 91–518, 84 Stat. 1327 (1970).

[132] To white audiences, EOA allowed "the monetary costs of fighting poverty to substitute for the high emotional costs involved in combating racial prejudice. The white liberal, the urban public official, and the southern politician all benefited from the exchange." ZAREFSKY, *supra* note 96, at 31. But in discussions with Black leaders, Shriver frequently linked the EOA with the Civil Rights Act of 1964, and the two pieces of legislation were discussed as directly related in Congressional debates. *Id.* at 32.

[133] DONOVAN, *supra* note 125, at 33-36.

[134] SAR A. LEVITAN, THE GREAT SOCIETY'S POOR LAW: A NEW APPROACH TO POVERTY 3 (1969).

[135] Bailey & Duquette, *supra* note 124, at 358-360.

[136] Economic Opportunity Act of 1964, Pub. L. No. 88-452, § 202 (1964).

[137] ZAREFSKY, *supra* note 96, at 33; Melish, *supra* note 99, at 18. Yarmolinsky, *supra* note 129, at 48.

[138] KATZ, *supra* note 120, at 124-25.

[139] DANIEL P. MOYNIHAN, MAXIMUM FEASIBLE MISUNDERSTANDING 86 (1969).

actually function: among the planners discussing the implementation of the mandate, "the question of resident control of community-action agencies never arose."[140] A participatory democracy that was collective, resident-led, and that looked anything like SNCC in its participatory processes was never considered as a possible outcome of requiring the "maximum feasible participation" of low-income people in the decisions impacting their communities. They simply "believed that poor people lacked the will and organizational capacity to use this power to help themselves."[141] The Johnson Administration envisioned planning would largely happen in a top-down manner, imagining that the first step would be an expert-driven study of local poverty, identification of the areas of the greatest need, and then planning a specific program for those areas, connecting schools, social services, job opportunities, and local political leadership.[142]

Daniel Moynihan called their approach the "professionalization of reform," which he saw as a move away from an older, naively populist model of social change in which "the impulse to reform…[comes] those groups most oppressed by existing conditions, or most likely to benefit from equitable change."[143] Moynihan imagined a government that would not need to hear from oppressed or marginalized people at all; developing mechanisms for social change would come from "persons whose profession was to do just that."[144]

The drafters' goal for the "maximum feasible participation" mandate should be understood in the context of this model of "professional" reform in the Kennedy and Johnson Administrations. The role of the community in CAP was, at most, expected to be an important but minimal check on top-down planning: some "voices representing the poor" would be included in the process to keep the planners "'honest' to its purposes."[145] CAP was premised on an expert-led, centralized local authority that could fairly and objectively understand community issues, make decisions about what was best for the community, and then leverage its power and influence to coordinate the work of other public and private agencies in furtherance of its program with a minimum of bureaucratic delays.[146] By "maximum feasible participation," the executive branch had a fantasy of "the local principal, the minister, the settlement house director, the head of the tenant's union, the articulate welfare mother, the bright ex-convict who is a neighborhood leader"[147] sitting with planners appointed by city leaders to offer support for their benevolent ideas. It was a vision of an orderly, controlled form of participation "conceived in a mood of political optimism which bordered on naivete."[148]

The top-down assumptions of the bill's drafters were mirrored in the funding structure of CAP, which is based on the near-total discretion of the OEO director to "allocate and expend, or transfer

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[140] Sanford Kravitz, *The Community Action Program—Past Present, and Its Future?*, *in* ON FIGHTING POVERTY: PERSPECTIVES FROM EXPERIENCE 52, 62 (James L. Sundquist ed., 1969).

[141] HALPERN, *supra* note 110, at 107.

[142] Kravitz, *supra* note 140, at 60.

[143] MOYNIHAN, *supra* note 139, at 21.

[144] *Id.* at 23. President Kennedy seemed inclined toward this model as well; he brought friends, consultants, experts, and colleagues, many from academia or other elite institutions to help develop this kind of "professional" reform. Even before he was elected, his advisors were called a new "brain trust" in a reference to Roosevelt's New Deal-Era "brain trust." *See* H.M., *The Democratic Convention: Kennedy's Brain Trust and His Plans for a "New" New Deal*, SCIENCE, Jul. 22, 1960, at 209 (describing advisors Archibald Cox, John Kenneth Galbraith, and Arthur Schlesinger, among other intellectuals and policy experts around Kennedy).

[145] Kravitz, *supra* note 140, at 60.

[146] *Id.*

[147] John G. Wofford, *The Politics of Local Responsibility: Administration of the Community Action Program—1964-1966*, *in* ON FIGHTING POVERTY: PERSPECTIVES FROM EXPERIENCE 70, 101 (James L. Sundquist ed., 1969).

[148] DONOVAN, *supra* note 125, at 113.

to other Federal agencies for expenditure, funds made available under this Act as he deems necessary."[149] Even before the passage of the EOA, Johnson had named Shriver for the role,[150] a position that seemed to have nearly complete discretion to make funding decisions based on "the incidence of poverty within the community…and the extent to which the applicant is in a position to utilize efficiently and expeditiously the assistance for which application is made."[151]

III. Two Ideas of Participatory Democracy Collide

Applications for CAP funding began to come in to the OEO soon after the EOA was passed, largely from "the usual array of public officials and civic leaders,"[152] who began discussing their proposals with OEO staff in the second half of 1964.[153] OEO staff were directed to ask "whether representatives of the poor had participated in developing the proposed program to the 'maximum extent' feasible," and the response from most local government insiders was that they did all they could, no matter how little that was; after all, part of the mandate was to have these programs use their funding "efficiently and expeditiously,"[154] and, of course, "you can't have unqualified people running good programs."[155]

At first, such answers were acceptable to the OEO.[156] But after a few months, complaints about the process started to roll in.[157] First they came from established national organizations like the NAACP and the Urban League, who wanted to be consulted.[158] But soon demands to fulfill the "maximum feasible participation" mandate grew "angrier" and came from "entirely new groups."[159] This is where the influence of the participatory democracy that had been simmering in countless local groups influenced by SNCC, the sit-in movement, Highlander, and SDS collided with the expectations of the Johnson Administration experts, as suddenly, all around the country, "[B]lack communities organized and demanded authority over the program's priorities and decision-making."[160]

The OEO felt that it could not simply ignore the "maximum feasible participation" mandate, and by Spring 1965, it began to suggest that community action programs "include approximately one-third representation of low-income groups, chosen wherever feasible in accordance with 'democratic techniques.'"[161] For many communities distrustful of urban antipoverty programs after segregation, redlining, and Urban Renewal, communities that were promised they would have the "maximum feasible participation" in these new programs, this was not good enough. Elected officials and OEO leaders were flooded with complaints about CAP that spring and summer, about

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[149] Economic Opportunity Act of 1964, Pub. L. No. 88-452, § 602(h) (1964).

[150] Yarmolinsky, *supra* note 129, at 47.

[151] Economic Opportunity Act of 1964, Pub. L. No. 88-452, § 205(c) (1964).

[152] Audrey G. McFarlane, *When Inclusion Leads to Exclusion: The Uncharted Terrain of Community Participation in Economic Development*, 66 BROOK. L. REV. 861, 872 (2001).

[153] Wofford, *supra* note 147, at 80.

[154] Economic Opportunity Act of 1964, Pub. L. No. 88-452, § 205(c) (1964).

[155] FISHER, *supra* note 105, at 124 (quoting the Mayor of Nashville); Wofford, *supra* note 147, at 80.

[156] FISHER, *supra* note 105, at 124.

[157] MORONE, *supra* note 79, at 228.

[158] *Id.*

[159] *Id.*

[160] McFarlane, *supra* note 152, at 872.

[161] Paul E. Peterson & J. David Greenstone, *Rapid Change and Citizen Participation: The Mobilization of Low-Income Communities through Community Action*, *in* A DECADE OF FEDERAL ANTIPOVERTY PROGRAMS: ACHIEVEMENTS, FAILURES, AND LESSONS 241, 257 (Robert H. Haveman ed., 1977).

the "failure of the 'mayor's committee' to consult the residents of the area."[162] The complaints were so vocal and widespread that the House Labor and Public Welfare Committee demanded that the OEO permit community participation in "all levels and stages of planning and administration" of CAP.[163] The OEO responded by making awards to some community groups wholly unaffiliated with local or state government leaders.[164]

The idea of having "low-income, socially deprived" people—people of color in most cases—leading their own government-funded programs was a new development and, to many, a shocking one.[165] Hundreds of independent community action programs were created and debates raged over how they would be run, who would serve on their non-profit Boards of Directors, and over the very meaning of participation itself.[166] The community action programs formed in this period varied significantly, but a significant portion of these new groups were made up of a mobilized base of people of color that had familiarity with forms of organizing grounded in participatory democracy. As the welfare rights movement leader Johnnie Tillmon said: "Community action programs and agencies began to form and we began to participate. I'm sure whoever wrote those words 'maximum feasible participation of the poor,' wished they had not done that!'"[167] As Tillmon implies, participants in community action programs who came out of social movements knew they were taking a more engaged, activist, collectivist approach to participation than was likely intended by the Johnson Administration.[168] This was an opportunity to be heard, but it was more than that: it was an opportunity to receive resources that would be controlled by grassroots, participatory community groups to support their own neighborhoods.

Just as the OEO was succumbing to pressure to more meaningfully live up to its commitment to grassroots participation in CAP in summer 1965, uprisings—and panicked responses to them—were capturing the national attention.[169] Urban mayors, mostly Democrats, argued that the OEO was "undermining the integrity of local government."[170] The Mayors of San Francisco and Los Angeles spoke out against the OEO.[171] In Chicago, Mayor Richard Daley assumed that he would have *de facto* control of the local Community Action Agency; he appointed political allies to its

[162] FISHER, *supra* note 105, at 124-25; Wofford, *supra* note 147, at 80.

[163] HALPERN, *supra* note 110, at 110.

[164] *Id.* at 109.

[165] Peterson & Greenstone, *supra* note 161, at 257-58.

[166] McFarlane, *supra* note 152, at 873.

[167] PREMILLA NADSEN, WELFARE WARRIORS: THE WELFARE RIGHTS MOVEMENT IN THE UNITED STATES 34 (2005) (quoting an interview of Johnnie Tillmon by Hobart A. Burch, from the papers of the National Welfare Rights Organization's George Wiley).

[168] *Id.* at 247 n.150.

[169] Urban uprisings—"ghetto riots" in the popular language of the 1960s—can be dated to 1963 and 1964. In the Civil Rights movement in Birmingham, police attacked peaceful protesters, including children, with dogs, firehoses, and cattle prods, and local white residents shot at Black people and bombed residences and other parts of the Black community, killing four young girls in a Sunday School class in church. Some community members retaliated by attacking local white-owned businesses. NAT'L ADVISORY COMM'N ON CIV. DISORDERS, REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS 19 (1968). In July 1964, a 15-year-old Black student was killed by a police lieutenant, and Black communities in Brooklyn and Harlem battled police over six nights. *Id.* at 19-20. Other, smaller clashes arose in other cities, including Rochester, Jersey City, Elizabeth, and Chicago in 1964. *Id.* at 20. But the Watts Rebellion in Los Angeles in August 1965, in which the National Guard faced off against local residents, killing 34 people and arresting almost 4,000 more, was a shocking turn that captured the national attention and "evoked a new mood" across the country. *Id.*

[170] DONOVAN, *supra* note 125, at 54-56.

[171] FISHER, *supra* note 105, at 127.

leadership, using CAP funds to extend his influence.[172] The Woodlawn Organization, a South Side neighborhood coalition, complained that its groups were being shut out of CAP, and the OEO pressed Mayor Daley to reform.[173] Daley responded by attacking the OEO at the annual meeting of the U.S. Conference of Mayors in 1965, accusing the OEO of engaging in "class struggle."[174] Both the League of Cities and the U.S. Conference of Mayors began to advocate for limiting the participation of the poor in Community Action Agencies.[175]

But groups coming out of, or influenced by, the participatory democratic frameworks of Highlander, SDS, and, above all, SNCC were trying to seize the opportunity for the movement.[176] SNCC developed a plan with CORE for a statewide Head Start program serving Black youth in Mississippi in 1965; it was funded by the OEO, then was protested by pro-segregation Mississippi Senators John Stennis and James Eastland, who complained that the OEO was being politicized and mismanaged.[177] Seeking to mollify Southern leaders, the OEO clawed back that funding and awarded it to another organization to run an almost identical program, leading to further accusations of politicization.[178] Community action programs in cities in the Northeast and on the West Coast became targets for various leftist and Black Power groups. In San Francisco, political contests between these groups and city officials "expanded the social revolution in San Francisco into a chain reaction of unrest."[179] In Oakland, Newark, New York, and Syracuse, movement groups sought federal funds for political organizing and movement building—to pay movement organizers, not fund social service programs.[180]

MFY's "neighborhood service center" model was originally funded by the Ford Foundation to provide community services and support in an accessible way, by putting one-stop service providers directly in commercial corridors in low-income neighborhoods.[181] As this model spread to other cities and received CAP funding, staff in neighborhood service centers saw that many problems in low-income communities were rooted in exploitation and discrimination by local landlords, local merchants, local police, local welfare offices, and local elected officials—the centers of power in their neighborhoods.[182] Caseworkers in neighborhood service centers, often college students or recent graduates who may have been involved in SDS or other student movement groups, started to reject social work approaches that saw the problems of the poor as rooted in individual pathologies and began to look for opportunities for group advocacy.[183] Now with CAP funding, these federally-funded centers "began to organize the poor to picket public welfare departments and boycott school systems…[l]ocal officials were flabbergasted."[184] At MFY, federal CAP funding was used to support community-driven rent strikes, protests in the offices of elected officials, and legal actions against the welfare department and the police.[185] Two

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[172] Adler, *supra* note 116, at 556.
[173] *Id.* at 557.
[174] *Id.*
[175] FISHER, *supra* note 105, at 126-27.
[176] KRASOVIC, *supra* note 111, at 7 (arguing that "opening up the state to a broad [community participation]…especially in the years of the modern [B]lack freedom struggle…was an invitation to conflict").
[177] Adler, *supra* note 116, at 553-55.
[178] *Id.*
[179] HALPERN, *supra* note 110, at 124.
[180] *Id*. at 124-25.
[181] *Id.* at 102-03.
[182] *Id.*; Rabin, *supra* note 130, at 1276.
[183] NADSEN, *supra* note 167, at 36.
[184] PIVEN & CLOWARD, *supra* note 120, at 266.
[185] *Id.*

years after inspiring a major national program, the *New York Daily News* declared MFY to be "infested with Commies and Commie sympathizers."[186] A 1966 Comment in *Yale Law Journal* concluded that "maximum feasible participation" had come "to signify a militant slum organization, asserting its members' interests against the mayor...By now, [EOA] section 202(a)(3) has been widely interpreted as a mandate for the OEO to finance these militant organizations."[187] Even to the Johnson Administration's political allies, it looked like an "ugly process," in which encouraging participation had led CAP to become "a forum for dissent" against the power structures in low-income communities of color.[188]

IV. The Johnson Administration Tries to Take Back Control Through a Series of Tools that Became the Blueprint for the Non-Profit Industrial Complex

The response from both the OEO and Congress was to quickly try to take back control of the situation, using any tools they could. The OEO began to create exceptions to its own policies, both officially and unofficially. It backed away from its openness to community-driven initiatives.[189] It made private arrangements with mayors to have any CAP grants being considered for their cities be cleared through their offices.[190] It started to borrow from funds allocated to CAP to pay for more popular OEO programs like Head Start without Congressional authorization.[191] It declared it would not fund partisan political activity or organizations that were "subversive" or "not of good character."[192] Shriver appeared before the House Education and Labor Subcommittee ready to accept tighter federal controls on CAP programs, like regular federal audits and evaluations, Congressional oversight of their hiring and pay policies, restrictions on political activities, and limits on administrative expenses.[193]

The Johnson Administration also pushed new programs through Congress that were similar to CAP that ran parallel to it, but with significantly more control reserved for the federal government and private business interests. The 1966 Special Impact Program was an amendment to the EOA, written by Robert Kennedy after he visited Bedford-Stuyvesant, Brooklyn and saw the community economic development efforts being coordinated there by a coalition of groups called the Central Brooklyn Coordinating Council.[194] The Special Impact Program allocated funding specifically to support community development corporations, non-profit organizations that sought to aid urban redevelopment, including through small business support and other kinds of economic development.[195] Instead of mandating the maximum feasible participation of the low-income communities being served, the Special Impact Program required the "maximum participation of businessmen by their inclusion on boards of directors, advisory councils, or other appropriate means."[196]

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[186] FISHER, *supra* note 105, at 126.

[187] *Participation of the Poor: Section 202(a)(3) Organizations Under the Economic Opportunity Act of 1964*, 75 YALE L.J. 599, 610 (1966).

[188] DONOVAN, *supra* note 125, at 70-71.

[189] HALPERN, *supra* note 110, at 111.

[190] FISHER, *supra* note 105, at 127.

[191] DONOVAN, *supra* note 125, at 82.

[192] FISHER, *supra* note 105, at 127.

[193] DONOVAN, *supra* note 125, at 66.

[194] FRANKLIN A. THOMAS, AN UNPLANNED LIFE: A MEMOIR 33-41 (2022).

[195] NEAL R. PEIRCE & CAROL F. STEINBACH, CORRECTIVE CAPITALISM: THE RISE OF AMERICA'S COMMUNITY DEVELOPMENT CORPORATIONS 20 (1987).

[196] *Financing and Operating Community Development Corporation Business Activity*, 83 HARV. L. REV. 1592,

The Model Cities program was created by the Demonstration Cities and Metropolitan Development Act of 1966, and it became the first program of a new federal agency, the Department of Housing and Urban Development ("HUD").[197] It aimed to fund community development using a totally opposite set of beliefs from those at the heart of CAP: Model Cities provided funding to strengthen local government agencies serving low-income neighborhoods in the belief that their main problem was not any bureaucratic dysfunction, but simply a lack of adequate funding.[198] The "maximum feasible participation" requirement in CAP was scaled back to "widespread citizen participation"[199] in Model Cities, and this was interpreted to be a substantial change; HUD only reserved a limited, advisory role for local residents in Model Cities programs and, in most cities, proposals were created Mayoral staff.[200]

In the 1966 mid-term election, 45 Congressmembers who supported the OEO were defeated, and 45 Republicans who opposed increases in antipoverty spending were elected; this new Congress would take further action to rein in CAP as well.[201] Democratic Congressmember Edith Green of Oregon offered an amendment to a 1967 appropriations bill that required all community action programs: (1) be officially designated by state or local government and (2) have Boards of Directors comprised of no more than 51 people, made up of 1/3 public officials, 1/3 representatives of business, labor, civic, and charitable groups, and 1/3 democratically selected representatives of the target areas.[202] In effect, the "Green Amendment" changed the mandate from "maximum feasible participation" to one in which representatives of low-income communities would be limited to 1/3 of the votes within a body that made decisions by majority rule.[203] The Green Amendment was followed by much closer regulation of the whole CAP program. In 1966, all CAP funds except Head Start were discretionary, and community action programs could use them in any approved program.[204] By 1968, 60% of all CAP funds were directed to specific "national emphasis" programs—principally Upward Bound,[205] Manpower Development and Training,[206] and Legal Services[207]—with most of the rest of CAP funds going to administrative salaries and

1595-1600 (1970) (citing 42 U.S.C. § 2765(a)(2), (3)).

[197] Demonstration Cities and Metropolitan Development Act of 1966, Pub. L. 89-754 (1966). HUD was created by two 1965 laws, the Housing and Urban Development Act and the Department of Housing and Urban Development Act. HUD had consolidated under its authority the Federal Housing Administration, the Urban Renewal Administration, and the Community Facilities Administration, along with an increase in funding for its programs. Housing and Urban Development Act of 1965, Pub. L. 89-117, 79 Stat. 451 (1965); Department of Housing and Urban Development Act, Pub. L. 89-174, 79 Stat. 667 (1965).

[198] HALPERN, *supra* note 110, at 118.

[199] Demonstration Cities and Metropolitan Development Act of 1966, Pub. L. 89-754, tit. I, § 101, 80 Stat. 1255 (1966).

[200] HALPERN, *supra* note 110, at 122; McFarlane, *supra* note 152, at 875-76.

[201] ZAREFSKY, *supra* note 96, at 79.

[202] FISHER, *supra* note 105, at 127.

[203] *Id.* at 127-28.

[204] *Id.* at 128.

[205] Upward Bound is a college and career readiness program that was originally part of the Higher Education Act of 1965, Pub.L. 89-329, Title IV, § 302C, codified as amended at 20 U.S.C. § 1070a-13 (2008).

[206] The Manpower Development and Training Act of 1962 was a job training initiative for unemployed workers passed during the Kennedy Administration that has subsequently been repealed. 42 U.S.C. §§ 2571-2574, *repealed*, Pub. L. 93-203, Title VII § 714, formerly title VI, § 614, Dec. 28, 1973, 87 Stat. 883; renumbered title VII, § 714, Pub. L. 93-567, title I, § 101, Dec. 31, 1974, 88 Stat. 1845.

[207] The idea of providing federal funding for civil legal services was popular with the Ford Foundation and some of the reformers that were in and around the Kennedy and Johnston Administrations; the program was not included in the original text of the EOA, but Edgar and Jean Cahn's 1964 *The War on Poverty: A Civilian Perspective* described the idea of neighborhood law offices for poor people and convinced Shriver to include legal services as an activity

overhead, not community-designed or community-directed programs.[208]

Community action programs originally funded in late 1964 and 1965 to promote community participation and decrease bureaucracy were quickly burdened by a whole set of new requirements. Neighborhood service centers created to make accessing information about available social services programs as easy as a trip to the local commercial corridor found themselves "increasingly…worrying about caseloads, restricting eligibility, specializing in particular kinds of counseling, and so forth."[209] With the increased emphasis on the Special Impact Program and Model Cities, the OEO split off possible opportunities for community organizing within CAP from service provision and the community development of Model Cities and the Special Impact Program, programs that were "no longer seen as vehicles for community control but instead…for 'community-based' activities like housing or 'development."[210] Community development groups may have "had their roots" in "radicals storming city hall…civil rights marches, anti-Vietnam protests…and distrust of anyone in a business suit," but by the 1970s and 1980s, at least for many community development groups, that radical past became "as much history for them as for the rest of American society."[211] What remained of CAP became seen by many low-income community residents as "part of the problem, another service agency."[212] The grantmaking functions of the OEO survived for a while, but became closely regulated and watched rather than community-designed and participatory, just another program to regulate the lives of low-income communities of color.[213]

As the Johnson Administration and, later, Congress backed away from the "maximum feasible participation" commitment, they deployed quite varied tactics to regulate the programs they were funding. These tactics became the essential technologies of the non-profit industrial complex. They stripped groups of funding.[214] They required Boards and organizational leaders be comprised of people palatable to elected officials.[215] They blocked groups they deemed to be too partisan, too

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that could be funded under the act. Alan W. Houseman, *Civil Legal Assistance for Low-Income Persons: Looking Back and Looking Forward*, 29 FORDHAM URB. L.J. 1213, 1213 (2002); Alan W. Houseman, *To Establish Justice for All: The Past and Future of Civil Legal Aid in the United States,* 23 GEO. J. ON POVERTY L. & POL'Y 325, 329-30 (2016). *See* Edgar S. Cahn & Jean C. Cahn, *The War on Poverty: A Civilian Perspective*, 73 YALE L.J. 1317 (1964). Civil legal services was added to amendments to the EOA in 1966 and 1967, and today exists as the Legal Services Corporation Act, 42 U.S.C. §§ 2996 - §§ 2996l (1977).

[208] FISHER, *supra* note 105, at 128.

[209] HALPERN, *supra note* 110, at 113.

[210] JAMES DEFILIPPIS, UNMAKING GOLIATH: COMMUNITY CONTROL IN THE FACE OF GLOBAL CAPITAL 47 (2004).

[211] PEIRCE & STEINBACH , *supra* note 195, at 8. Peirce and Steinbach represent the views of a certain segment of CED practitioners, but, as I have argued elsewhere, "to frame all of CED as a tool of the Ford Foundation and governmental agencies comes too close to stripping low-income communities of color of their agency." Michael Haber, *Transactional Clinical Support for Mutual Aid Groups: Toward a Theory of Transactional Movement Lawyering*, 68 WASH. U. J. L. & POL'Y 215, 241 (2022) A more complete view of contemporary CED practices could be defined as "the set of practices that emerged from the tension between the interests of the powerful governmental and private funders that sought to simultaneously fund and control CED programs, on the one hand, and the interests of community activists and community organizations seeking to leverage those funds…while bending as little as possible…on the other." *Id.*

[212] JAMES LEIBY, THE HISTORY OF SOCIAL WELFARE AND SOCIAL WORK IN THE UNITED STATES 338 (1978).

[213] The OEO survived in this weakened state until 1981, when its grantmaking functions were transferred to the Office of Community Services within HUD. 42 U.S.C. § 9805-9807 (1981).

[214] *See supra* note 178 and accompanying text. For a similar argument from the non-profit industrial complex literature, *see* Smith, *supra* note 7, at 1-2 (describing the sudden revocation of a grant due to a funder's opposition to a statement on their website).

[215] *See supra* note 192 and accompanying text. For a similar argument from the non-profit industrial complex literature, *see* ANA CLARISSA ROJAS DURAZO, *"We Were Never Meant to Survive": Fighting Violence Against Women*

political, or otherwise "subversive."[216] They closely tracked numerical outcomes and eligibility criteria and demanded significant organizational time be spent on such policing of eligibility.[217] They narrowed what could qualify for funding.[218] And they split politicized community organizing from "community based" service provision, and reserved almost all funding for the latter.[219]

Over time, many who had hoped to plant real democratic seeds in their communities ended up taking official positions as "model-cities directors, or community-action executives—that is, they became government employees or contractors, subject to the constraints of federal funding and federal guidelines."[220] Some participatory groups that once wanted to collectively determine where funds would go in their communities developed into hierarchical groups "vying for position and patronage within the urban political system."[221] Some of those groups' leaders would even go on to seek elected office, completing the process of converting participatory democratic group leaders into elected officials, "absorbing and directing many of the agitational elements in the [B]lack population."[222]

When social movement groups talk about the non-profit industrial complex, these are the kinds of tactics that they mean. Together, they manipulate social movement groups, funneling their energies into service provision and paperwork, encouraging their leaders into non-profit sector and government careers, pushing them to be more receptive to partnerships with businesses and to become more businesslike themselves.[223] Participatory democratic groups that engage with the non-profit industrial complex encounter a dizzying set of false hopes, setbacks, changing requirements, funds clawed back and visions compromised, little of it transparent, little even done legislatively. In CAP, an innovative, participatory antipoverty program was created by the executive branch almost by accident, as it rushed to build something without an appreciation for

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and the Fourth World War, *in* THE REVOLUTION WILL NOT BE FUNDED: BEYOND THE NON-PROFIT INDUSTRIAL COMPLEX 113, 117-19 (INCITE! WOMEN OF COLOR AGAINST VIOLENCE ed., 2d ed. 2017) (describing how funding for community groups led to women's anti-violence groups becoming more hierarchical, hierarchies that usually recreate "social axes of inequality such as class, race, nationality, sexuality, and ability.")

[216] *See supra* note 192 and accompanying text. For a similar argument from the non-profit industrial complex literature, *see* Alisa Bierria, *Pursuing a Radical Antiviolence Agenda Inside/Outside a Non-Profit Structure*, *in* THE REVOLUTION WILL NOT BE FUNDED: BEYOND THE NON-PROFIT INDUSTRIAL COMPLEX 151, 156 (INCITE! Women of Color Against Violence ed., 2d ed. 2017) (describing an effort to strip a group's funding because an elected official took issue with the use of the phrase "rape culture" in their materials).

[217] *See supra* note 209 and accompanying text. For a similar argument from the non-profit industrial complex literature, *see* JENNIFER R. WOLCH, THE SHADOW STATE, GOVERNMENT AND VOLUNTARY SECTOR IN TRANSITION 15 (1990) (describing the increasing reliance on "stringent, rigid, and quantitatively oriented approaches" to funding, which undermines the autonomy of non-profit groups).

[218] *See supra* notes 204-208 and accompanying text. For a similar argument from the non-profit industrial complex literature, *see* Nicole Burrowes et al., *On Our Own Terms: Ten Years of Radical Community Building with Sista II Sista*, *in* THE REVOLUTION WILL NOT BE FUNDED: BEYOND THE NON-PROFIT INDUSTRIAL COMPLEX 227, 229 (INCITE! Women of Color Against Violence ed., 2d ed. 2017) (describing how ideas that were once seen as new and innovative became, in an increasingly conservative political climate, "threatening and 'unfundable'").

[219] *See supra* note 210 and accompanying text. For a similar argument from the non-profit industrial complex literature, *see* Paul Kivel, *Social Service or Social Change*, *in* THE REVOLUTION WILL NOT BE FUNDED: BEYOND THE NON-PROFIT INDUSTRIAL COMPLEX 129, 136-37 (INCITE! Women of Color Against Violence ed., 2d ed. 2017) (arguing that government and foundations help maintain the social order by supporting service provision that is "severely underfunded and overregulated" but always just service provision that never quite turns to address "the structural issues as required to actually eliminate the injustice or inequality.")

[220] PIVEN & CLOWARD, *supra* note 120, at 274-75.

[221] *Id.* at 275.

[222] *Id.* at 275-76.

[223] *See supra* note 4 and accompanying text.

the radical potential of participatory democracy. To diffuse that energy, the Johnson Administration quickly had to scale back and chip away and what it had just offered, using a series of techniques that became the blueprint for the non-profit industrial complex, techniques that remain widely used by government and private funders of community organizations to this day.

Conclusion

Scholarly analyses of the non-profit industrial complex largely focus on how these mechanisms have often constrained and tamed social movements by pushing them into acceptable, depoliticized forms of action. The history of how a number of the techniques of the non-profit industrial complex were developed by the executive branch when it sought to constrain participatory democratic grassroots groups involved in CAP reveals both the social function of the non-profit industrial complex and the potential threat to entrenched power that grassroots participatory democracy continues to possess. But in this historical moment, as the U.S. moves increasingly toward oligarchy and autocracy,[224] the stakes of the non-profit industrial complex are increasingly stark.

The Johnson administration developed these tools to try to control the radical, Deweyan participatory democratic impulses of grassroots 1960s movements that had somewhat accidentally been allowed to take a meaningful role within CAP and, through it, the War on Poverty, and to restore control back to the executive branch. In so doing, it created a blueprint for how elite institutions could exert control over the grassroots, preserving and even expanding their own power in the process. In the ensuing decades, this relationship increasingly became the norm. Tragically, however, this strategy ignored the deep interconnection between local, participatory democratic institutions and democratic states, one that has been discussed by social scientists and political theorists in all sorts of contexts.[225]

As democratic institutions from apolitical community groups to labor unions to movement groups have been turned into hierarchical, professionally-managed, expert-led non-profits and

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[224] *See, e.g.,* President Joe Biden, *Remarks by President Biden in a Farewell Address to the Nation* (Jan. 15, 2025), https://www.whitehouse.gov/briefing-room/speeches-remarks/2025/01/15/remarks-by-president-biden-in-a-farewell-address-to-the-nation/ (warning of a "an oligarchy…of extreme wealth, power, and influence that literally threatens our entire democracy"); Steven Levitsky & Lucan A. Way, *The Path to American Authoritarianism*, FOREIGN AFF. (Feb. 11, 2025), https://www.foreignaffairs.com/united-states/path-american-authoritarianism-trump; Lawrence Norden & Daniel I. Weiner, *The Rise of America's Broligarchy and What to do About It*, TIME (Feb. 12, 2025), https://time.com/7221154/rise-of-americas-broligarchy/; David Smith, *"In a Real Sense, US Democracy Has Died": How Trump is Emulating Hungary's Orbán*, Guardian (Feb. 7, 2025), https://www.theguardian.com/us-news/2025/feb/07/trump-viktor-orban-electoral-autocracy.

[225] For example, Robert Putnam argues that the decline of fraternal membership organizations—as seemingly insignificant as the decline of recreational bowling leagues—has harmed U.S. democracy: "It is commonly assumed that cynicism toward government has caused our disengagement from politics, but the converse is just as likely: that we are disaffected because as we and our neighbors have dropped out, the real performance of government has suffered." ROBERT D. PUTNAM, BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY 347 (2000). Emile Durkheim asserts that individual participation in "secondary groups" is essential to national coherence, arguing that "a nation can be maintained only if, between the state and the individual, there is a intercalated a whole series of secondary groups near enough to the individuals to attract them strongly in their sphere of action and drag them, in this way, into the general torrent of social life." EMILE DURKHEIM, THE DIVISION OF LABOR IN SOCIETY 28 (1964). Similarly, John Stuart Mill argues that local, accessible forms of participatory democracy are a necessary precondition for the liberal state, writing that "as we do not learn to read or write, to ride or swim, by merely being told how to do it, but by doing it, so it is only by practicing popular government on a limited scale, that the people will ever learn how to exercise it on a larger." JOHN STUART MILL, *Tocqueville on Democracy in America, Vol. 1*, *in* ESSAYS ON POLITICS AND CULTURE 173, 186 (Gertrude Himmelfarb ed., 1962).

been drained of the power that comes from democratic participation, today, some of the very institutional actors that helped lay the groundwork for the non-profit industrial complex—private foundations,[229] elite universities,[230] and policy experts[231]—are themselves under attack. Unfortunately, like Pastor Niemöller, they may be realizing too late that their own past actions have helped to create a world in which there are very few popular, participatory organizations left to speak out for them.[232]

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[229] *See, e.g.*, Drew Lindsey, *Trump's DEI Order Takes Aim and the Biggest Foundations. Here are the 346 that Could Face a Probe*, CHRON. OF PHILANTHROPY (Feb. 27, 2025), https://www.philanthropy.com/article/these-346-foundations-are-candidates-for-a-trump-dei-investigation (noting the impact on the Ford Foundation and other major foundations).

[230] Notably, the second Trump Administration has singled out Columbia University, once the home of John Dewey, Richard Cloward, and Lloyd Ohlin, where Muste traveled to hear Dewey speak and where the ideas for MFY were theorized, for attack. *See, e.g.,* Sharon Otterman, *Trump Escalates Attack on Columbia by Threatening Its Accreditation*, N.Y. TIMES (Jun. 4, 2025), https://www.nytimes.com/2025/06/04/nyregion/columbia-trump-accreditation-civil-rights.html.

[231] *See, e.g.*, Jody Freeman & Sharon Jacobs, *Structural Deregulation*, 135 HARV. L. REV. 585, 615-20 (describing efforts by the first Trump Administration to weaken agency expertise is an example of what the authors call "structural deregulation").

[232] Pastor Martin Niemöller was a prominent German pastor with long-held anti-Semitic and anti-Communist views who became a vocal supporter of the Nazi party. After he gave a statement that was viewed as insufficiently supportive of the German government, he was deemed to have committed "underhand attacks against the State" and "abuse of the pulpit," detained for seven months and, after being sentenced to, in effect, time served, he was taken from the court to the "protective custody" of the Sachsenhausen and Dachau concentration camps from 1938 to 1945. WILLIAM L. SHIRER, THE RISE AND FALL OF THE THIRD REICH: A HISTORY OF NAZI GERMANY 208-212, 239 (1960). His post-war confessional, reflecting his own later-acknowledged complicity, became widely known as FIRST THEY CAME: "First they came for the socialists, and I did not speak out—because I was not a socialist. Then they came for the trade unionists, and I did not speak out—because I was not a trade unionist. Then they came for the Jews, and I did not speak out—because I was not a Jew. Then they came for me—and there was no one left to speak for me." *Martin Niemöller: "First They Came for…"*, UNITED STATES HOLOCAUST MUSEUM, HOLOCAUST ENCYCLOPEDIA, https://encyclopedia.ushmm.org/content/en/article/martin-niemoeller-first-they-came-for-the-socialists.